

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward M. Hogan, Referee

Award Number 24062
Docket Number MW-24352

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation
(former Penn Central Transportation Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Foreman D. E. Johnson for alleged 'Removal and possession of contents (eleven one-litre "Old Thompson" whiskey bottles) from Trailer RLNZ 200288' on May 14, 1980 was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System Docket No. 586).

(2) Foreman D. E. Johnson shall be reinstated with seniority and all other rights unimpaired, his record be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was dismissed from the service of the Carrier following a formal investigation on the charges of removing and possessing without proper authorization eleven bottles of whiskey from a trailer. This Board has held consistently that it is not the trier-of-fact, and that it will not upset the findings of fact as determined at a duly constituted and fair hearing, absent evidence of arbitrary or capricious conduct or abusive behavior. Here, we find none. We do, however, find ample and substantial evidence throughout the record to substantiate the findings as resulted from the investigation.

Furthermore, we must uphold the measure of discipline as was determined in this instant case. Theft is a serious offense. Numerous Awards of this Board have upheld this principle. Award No. 104LE of Special Board of Adjustment No. 589, gives a succinct rule:

"The Carrier is entitled to invoke severe measures against employees found pilfering property entrusted to the custody of the Carrier for shipment and to demand the highest standards of probity and honesty of the employees engaged in handling goods entrusted to the Carrier."

We affirm that the discipline of dismissal imposed upon the Claimant was fully warranted.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of December 1982.

