

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24367
Docket Number MW-24351

Edward M. Hogan, Referee

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

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

(1) The dismissal of Trackman Gary L. Dobbs for alleged 'Removal and possession of contents (eleven one-litre "Old Thompson" whiskey bottles) from Trailer RINZ 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. 587).

(2) Trackman Gary L. Dobbs 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 theft of eleven bottles of whiskey, the contents of a consigned shipment. The Claimant raises the issue that the charges brought at the investigation were unproven. It is a well-settled principle of this Board that the trier-of-fact is not this Board; rather it is the hearing officer who is able to be present at the giving of testimony, hear the facts as adduced at the hearing and witness firsthand the demeanor and physical presence of witnesses in the matter. It is also well-established that this Board 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 or discriminatory behavior on the part of the hearing officer.

We find no such conduct here. We do find ample and substantial evidence throughout the record to substantiate the findings as resulted from the investigation.

Finally, we find that the measure of discipline should be upheld in this case. Theft is a serious offense. Numerous awards of this Board so state, see Award 24062

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 Employes involved in this dispute are respectively Carrier and Employes 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 13th day of May 1983.

