

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25241
Docket Number SG-25322

Eckehard Muessig, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation on behalf of C&S Maintainer Richard F. Allen, who was suspended from service on July 29, 1982 and subsequently dismissed for alleged "unauthorized possession and use of company gasoline." Restoration to service with reimbursement of lost wages is requested. [Carrier file No. System Docket 1932-D Central Region Case BRS 5-82]

OPINION OF BOARD: This claim came about subsequent to a trial and a finding by the Carrier that the Claimant deliberately removed and used Carrier's gasoline for his personal use without proper authority.

While it is not seriously arguable that the Claimant took Carrier's gasoline, the Organization essentially contends that the Claimant did this in order to be reimbursed for buying miscellaneous articles for the Carrier's use in the past. Moreover, it maintains that the Claimant was under the impression that there was a \$25.00 minimum for expense accounts to be submitted for reimbursement. These factors, taken together, coupled with other circumstances in the record, provide the Organization's basis for concluding that dismissal of the Claimant is excessive discipline.

The evidence shows that the Claimant took gasoline from the Carrier for his personal use. This Division has held in many of its awards that the Carrier has no obligation to retain in its employ those employees who prove to be dishonest, and we do not deviate from this general principle.

However, in the case at hand, although the distinction is a fine one, we conclude that the Claimant used extremely poor judgment and that his actions were not ones of dishonest intent. His mistaken belief that he could take the gas to compensate himself for unreimbursed monies spent on Carrier's behalf does not strain reasonableness, given his relatively good record of 34 years of service to the Carrier. Accordingly, while the Board does not lightly disturb discipline after the charges proven, under the circumstances herein, we will award that Claimant be restored to the service with seniority and other rights unimpaired, but without compensation for time lost while out of the service.

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

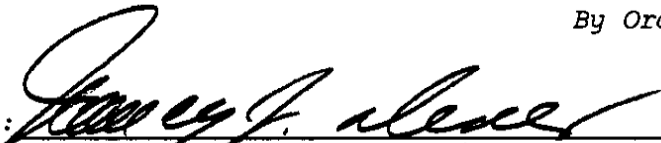
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1985.

