

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25665
Docket Number MW-25529

Nicholas Duda, Jr., Referee

(Brotherhood of Maintenance of Way Employes

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

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

1. The dismissal of Trackman D. T. Burnette for alleged 'unauthorized removal of crossties from under the rails of the Florence Lead Track', 'unauthorized possession and use of Conrail track tools' and alleged 'theft of crossties from Conrail Property on May 21, 1983' was without just and reasonable cause and excessive (System Docket CR-355-D).

2. Trackman D. T. Burnette shall be reinstated with seniority and all other rights unimpaired."

OPINION OF BOARD: Claimant, a Track Foreman with 35 years of service was apprehended by local and Carrier police removing ties from the Florence lead track in Smith Township, Pennsylvania. When confronted by Carrier's police officer, Claimant contended he had permission to remove the ties. A check with the Supervisor disclosed that no such permission was given.

Following a hearing on charges of unauthorized removal and theft of cross ties and unauthorized possession and use of Carrier's track tools, Claimant was dismissed.

There was substantial and credible evidence to support the Carrier's determination that Claimant was guilty of the charges. Accordingly, discipline was not inappropriate. Part of the final handling on the property involved a plea for reinstatement on a leniency basis because of Claimant's long years of service. This Board had reviewed the entire record, including the correspondence. This Board has consistently held that the reinstatement of employes based on leniency is exclusively within the discretion of the Carrier. Here Claimant was guilty of a dishonest act as charged by the Carrier. Discharge is severe, but not inappropriate under the circumstances. The Board is not empowered to grant leniency and hence has no alternative but to deny the Claim.

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

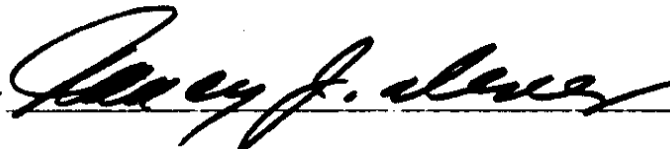
That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1985.