

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26697
Docket Number MW-27129

Ronald L. Miller, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(National Railroad Passenger Corporation - (Amtrak)
(Northeast Corridor

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

(1) The dismissal of Trackman G. Massa for alleged violation of Rule 'I' on January 25, 1985, was without just and sufficient cause and on the basis of unproven charges (System File NEC-BMWE-SD-1273D).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The key questions in this case are whether or not the Claimant committed a punishable act, and if so, whether the discipline imposed was fair and reasonable.

The central facts of this case are not in dispute. The Claimant, while on a paid lunch break (and therefore subject to duty), received stolen property, transported that property in a Carrier vehicle to the job site, was arrested on Carrier property, and was charged and later pleaded guilty in court to receipt of stolen property.

The Claimant was charged by the Carrier, and subsequently dismissed effective April 9, 1985, for his violation of Rule 'I', which states in part:

"Employees will not be retained in the service who...
do not conduct themselves in such a manner that the
Company will not be subjected to criticism and loss of
good will."

The initial discipline of discharge was subsequently modified to an eight (8) months suspension.

It is a generally recognized rule that an employee may be disciplined for acts done off the property if the off-the-property conduct adversely affects the employer-employee relationship. In this case, the illegal conduct occurred during paid time, and the Claimant was subject to duty.

For this Board to sustain the discipline, the connection between the illegal conduct and the extent to which the Carrier is affected must be reasonable and discernable. The record contains substantial evidence upon which to

conclude that the Carrier was subjected to criticism and the loss of good will by the Claimant's conduct, in particular, the transportation of stolen property in a Carrier vehicle, his arrest on Carrier property, and Claimant's admission of guilt in a public court.

Discipline in this matter is justified. There is no basis in the record to conclude that the discipline imposed was arbitrary, capricious, excessive, or an abuse of managerial discretion.

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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 23rd day of November 1987.