

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way Employees  
(Indiana Harbor Belt Railroad Company

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

(1) The dismissal of Chauffeur R. D. Hurt for alleged '... violation of Rules, L,E,D and B ... and Rule 3011....' was without just and sufficient cause, arbitrary and on the basis of unproven charges (Carrier's File MW-85-2).

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

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was employed by the Carrier at its Gibson, Indiana, facility. On January 24, 1985, Claimant was notified to attend a formal investigation in connection with the charge:

"to determine the facts and your responsibility, if any, in connection with the fact that at approximately 9:45 A.M., on Monday, January 14, 1985, you were observed dispensing an undetermined amount of company diesel fuel from the fuel and lube truck tank on I.H.B. Rental Unit 9224 into a 1979 Peugeot in the vicinity of 15th and Roosevelt Street in Gary, Indiana, which is in violation of Rules L, E, D and B of the Indiana Harbor Belt Railroad General

Rules and Rule 3011 of the Indiana Harbor Belt  
Railroad Maintenance of Way Safety Rules."

The Hearing took place on February 6, 1984, and as a result, Claimant was dismissed from service. The Organization thereafter filed a claim on Claimant's behalf challenging his dismissal.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of putting Company-owned diesel fuel into a private automobile. There is no question that that action was in violation of the Carrier's rules prohibiting theft.

Once this Board has determined that there is sufficient evidence to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find that the action taken by the Carrier to have been unreasonable arbitrary, or capricious.

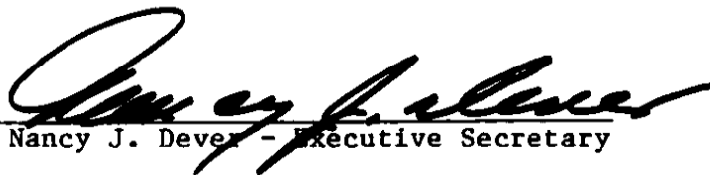
Numerous Board decisions have upheld the discharge of employees who were guilty of theft. This Board cannot find that the action taken against the Claimant was unreasonable, arbitrary, or capricious given the nature of the circumstances of his offense. Therefore, the claim must be denied.

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 6th day of June 1989.