

SPECIAL BOARD OF ADJUSTMENT NO. 541

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

ERIE LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM:

1. The Carrier improperly and unfairly dismissed Trackman Neil Ludwig from the Carrier's service effective April 16, 1964.
2. The Carrier shall now reinstate Claimant Neil Ludwig to his former position with this Carrier.

FINDINGS: Claimant was dismissed from Carrier's service for theft of some paper napkins. He had been returned from furlough to assist as a trackman at a derailment and while at work on the morning following his return to duty, picked up paper napkins that had fallen from one of the derailed cars and were lying in the snow. He denied at the hearing that he had intended to bring the napkins home but did sign a statement, in the presence of Carrier patrolmen, that he "intended to take one box of napkins home." None of the patrolmen was called upon to testify.

While the theft of even a small quantity of property may be serious enough to justify dismissal in an appropriate situation, the record before us in the present case is not sufficiently strong to warrant such extreme discipline, though all due regard is given management's prerogatives in discipline and leniency cases. The evidence does not establish to our satisfaction that Claimant is a dishonest employe who cannot be relied upon by his superiors. We will sustain this claim for reinstatement.

AWARD: Claim for reinstatement sustained.

Dated at New York, N.Y., this 29th day of October 1968.

/s/Harold M. Weston

HAROLD M. WESTON, Neutral

/s/J. Cunningham

EMPLOYEE MEMBER

/s/R. L. Carroll

CARRIER MEMBER