

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 286

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) - NORTHEAST CORRIDOR**

Case No. 183

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

1. The dismissal of Electric Traction Gang Foreman J. Troncone for alleged misappropriation of Company property in alleged violation of Rule F, Paragraph 3 was arbitrary, capricious and excessively harsh (System File NEC-BMWE-SD-3453D).
2. The Claimant shall be reinstated to the Carrier's service with seniority and all other rights unimpaired, have his record cleared of the charges leveled against him and be compensated for all wage loss suffered.

FINDINGS:

At the time of the incident at issue here, the Claimant was employed by the Carrier as an electric traction gang foreman at the Durant Yard in North Elizabeth, New Jersey and was assigned to continue the bonding process on the Haynes Avenue Bridge.

On January 6, 1995, the Carrier was notified that its employees were observed at a scrap yard unloading copper from a Carrier vehicle. After investigating the allegations, the Carrier concluded that the Claimant and his crew sold scrap copper which they had removed from the Haynes Avenue Bridge to Motor Plus Metals, Inc. Later that same day, the Claimant was removed from service and charged with "misappropriation of Company property".

During a formal hearing, the Claimant admitted to the wrongdoing but stated that his supervisor had instructed him to remove the scrap. The Claimant was found guilty and dismissed from the Carrier's service.

The Organization argues that "the Carrier failed to present any credible evidence to

support its allegation that the Claimant [he] had acted wrongly by following instructions he received from his supervisor..." The Carrier argues that the Claimant admitted to the wrongdoing. The parties being unable to resolve the issue at hand, this matter now comes before this Board.

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 dishonesty when he participated in a theft and unauthorized sale of company property on January 6, 1995. In the hearing, the Claimant stated, "Yes, we did" to the question which asked him:

I would like to question Mr. Troncone just to clear up that discrepancy, that if you did in fact remove the copper plating, put it on a company truck Amtrack truck, and take it to the junkyard and sell it, is that correct?

Given that admission, the Claimant was properly found guilty.

We reject the Claimant's "Nuremberg defense" that he was only following orders. First of all, there is absolutely no proof that he was given any order from his supervisor to misappropriate the Carrier's property. Secondly, even if he was, we reject that defense in its entirety as it would afford no reasonable excuse for this serious wrongdoing.


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 its action to have been unreasonable, arbitrary, or capricious.

In this case, the Claimant was found guilty of an extremely serious offense involving his dishonesty. Given that serious violation, this Board cannot come to any other conclusion other than to find that the Carrier acted with just cause when it terminated his employment. Therefore,

the claim will be denied.


AWARD:

Claim denied.


PETER R. MEYERS
Neutral Member


CARRIER MEMBER

DATED: 9-25-95


ORGANIZATION MEMBER
DATED: 9-25-95