

Special Board of Adjustment No. 956

PARTIES  
TO  
DISPUTE:

Brotherhood of Maintenance of Way Employees  
and  
New Jersey Transit Rail Operation, Inc.

STATEMENT  
OF  
CLAIM:

(a) Carrier violated Rule 26 and other provisions of the Rules Agreement when it assessed discipline of five days suspension deferred and full restitution cost for stolen tools on Plumber Foreman M. Dapice and Plumber Mechanic R. Schreiber on December 1, 1983.  
(b) Claimants' records must be cleared of the charges and compensated for all time lost and any fines, fees or penalties they were required to pay.

FINDINGS:

On the morning in question, claimant Schreiber signed out a worm drive skill saw as well as a 1/2 inch electrical drill and an extension from the Material Clerk for the Newark B&B Office. He and claimant Dapice then proceeded by truck to Brick Church Station where they had been instructed to make station repairs. At 9:45 a.m., Mr. Schreiber left the work site by train; he explained that he had just learned in a telephone conversation that his step-son had sustained an injury. He gave Mr. Dapice

the truck keys and asked him to "take care of things."

Foreman Dapice returned to Newark with the truck and discovered that the saw and drill were missing; his attempts to find them at the Brick Church Station area and elsewhere met without success.


There is no question but that both claimants failed to exercise due care. It does not appear they they lacked the truck or kept it under observation when they left the vehicle while at the Brick Church location.

While claimants' unblemished service records are quite impressive (Mr. Dapice with more than 30 years and Mr. Schreiber with over 4 years) and have been given considerable weight, we are satisfied that the five-day deferred suspension administered to each of them is not excessive in the circumstances of this case. On the other hand, there is no basis in applicable rules or practices for including in the discipline monetary restitution of the missing tools' depreciated value; that portion of the disciplinary action will be disallowed.

AWARD: Claim denied as to the five-day deferred suspensions.  
Claim sustained as to tool value restitution. To be effective within 30 days.

Adopted at Newark, N.J., January 28 1985.

  
Harold M. Weston, Chairman

  
Carrier Member *Diosending*

  
Employee Member