

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

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

Case No. 187

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

1. The dismissal of Electric Traction Lineman/Truck Driver J. Lenart for alleged violation of Rule F, Paragraph 3 was arbitrary, capricious, on the basis of unproven charges and excessive (System Docket NEC-BMWE-SD-3465D).
2. The Claimant shall be reinstated to the Carrier's service with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered from January 6, 1995 until his return to service.

FINDINGS:

At the time of the incident at issue here, the Claimant was employed by the Carrier as an electric traction lineman/truck driver at the Durant Yard in North Elizabeth, New Jersey and was assigned to work on the Haynes Avenue Bridge. He was under the direction of the Gang Foreman Troncone.

On January 6, 1995, the Carrier was anonymously notified that its employees were observed at a scrap yard unloading copper from a Carrier vehicle. After investigating the allegations, the Carrier discovered that the Claimant had driven the Carrier truck to the scrap yard and stayed with the truck while the other gang members unloaded the copper material which they had removed from the Haynes Avenue Bridge for its sale 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 testified that he was under the impression that he and the gang were driving back to Durant Yard but that Foreman Troncone demanded he drive to the scrap yard. The Carrier, relying on the Claimant's own verbal and signed admission to participating in the sale of the scrap copper, dismissed the Claimant from service.

The parties being unable to resolve the issue at hand, this matter now comes before this Board.

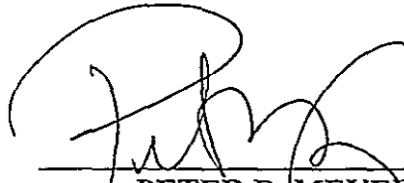
This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of dishonesty when he participated in the theft and unauthorized sale of Carrier property on January 6, 1995. In his testimony at the hearing, the Claimant did not deny participating in the scheme and also admitted that he had received his share of the proceeds. Like some of the other employees involved in this theft, the Claimant used the Nuremburg defense by stating, "I was following his orders". However, this Board finds that that cannot be a good excuse for such serious wrongdoing even if it were true. Moreover, this Board does not see any evidence that the Claimant was acting under any orders but instead the record reveals that he was a willing participant in the scheme. The Claimant also tries to excuse his behavior by stating that he exercised "poor judgment" but he admits that he knew that it was wrong when he took the money.

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.

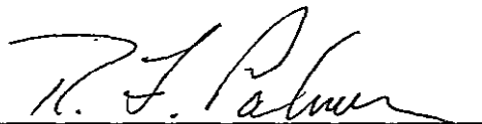
The Claimant in this case was guilty of a very serious offense. Claimant has worked for six years with this Carrier with absolutely no discipline on his record. The decision to terminate him was the Carrier's and this Board can only review that decision. This Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated his employment. The Carrier had just cause and it could have exercised leniency if it desired to do so. It apparently did not in this case, and this Board cannot find that its actions were without just cause. Therefore, the claim must be denied.

AWARD:

Claim denied.

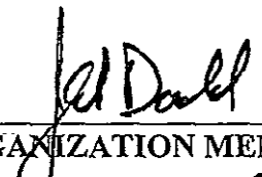


PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: 9-25-95



ORGANIZATION MEMBER
DATED: 9-25-95