

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP  
CLERKS, FREIGHT HANDLERS, EXPRESS AND  
STATION EMPLOYES**

**LEHIGH VALLEY RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6925) that:

(a) The Carrier violated the current Agreement between the parties when after Hearing and Investigation it dismissed Mr. Louis P. Page, Storekeeper, South Easton, Pa. from the service of the Company, and;

(b) Carrier's action in this case is arbitrary capricious and unwarranted, and;

(c) The Carrier shall now be required to restore Mr. Louis P. Page to service with all rights unimpaired and compensate him for all wage loss from August 6, 1969, when he was dismissed from the service until restored to service with all rights unimpaired, such rights to include paid for life insurance and hospital, medical, and surgical insurance for himself and dependents, Travelers Insurance Company.

**OPINION OF BOARD:** Claimant, during the investigation, was guided by the old maxim which goes: "Tell the truth and shame the Devil!". His testimony was honest, open and frank. During it he demonstrated a willingness to cooperate completely with Carrier in its investigation of misappropriated materials. He candidly admitted having taken gasoline for use in his personal car about "four or five months" before the time of the hearing. This was the first blemish on his record which extended back to 1941. A reference in the record to similar unauthorized use of gasoline by Claimant since 1948 fails to fix the time of the incidents. The record is clear that this is the first time Claimant has been charged with such an offense. Under these circumstances, Carrier is estopped from urging incidents remote in time as a basis that Claimant is a second offender.

In the Labor-Management field it is well established that the purpose of administering discipline to employes for infractions of rules is not to inflict punishment but rather to rehabilitate, correct and guide employes in the proper performance of their assigned tasks. The ultimate penalty of dis-

missal is reserved for repeated and serious infractions of work or conduct rules. This is particularly so in the case of veteran employes such as the Claimant before us.

We do not condone the misappropriation of property. However, it is a practice which, unfortunately, abounds. But the discipline must be reasonable. Thus, the punishment for petty larceny was less than for grand larceny. The punishment must fit the crime.

The record shows that Claimant is a highly cooperative, competent employe who clearly showed in his testimony at the hearing that Carrier's interest were of paramount importance to him and that his long service with Carrier has been exemplary, except for this confessed wrong doing. In this connection Claimant chose to represent himself and it is somewhat doubtful that except for his forthrightness Carrier would have had any evidence to implicate him.

On the basis of the foregoing, we find that the discipline was not commensurate with the offense and was therefore arbitrary.

Under the circumstances of this case, we shall find, that the dismissal of the Claimant was in violation of the agreement. We shall require Carrier to offer Claimant immediate and full reinstatement to his former position without any loss of status or seniority. However, we will deny the claim to the extent that it seeks back pay, Award 13669, and others.

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

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 1, 1934; .....

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated in accordance with the Opinion.

#### AWARD

Claim sustained as indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: E. A. Killeen  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1972.