

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21889
Docket Number MN-22025

non **Hamilton**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employes**
(Chicago, Rock Island and Pacific Railroad Company
(William M. Gibbons, Trustee)

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

(1) The dismissal of Maintenance Gang Foreman A. R. Shanks and Maintenance Gang Laborer Albert Carnejo was unduly harsh and excessive and they should each be restored to service with seniority and all other rights unimpaired (System File 6-D-647).

OPINION OF BOARD: The Claimant, A. **R.** Shanks, was employed by the Carrier from 1956 until his termination June 20, 1975.

The Claimant, Albert Carnejo, was employed by the Carrier from January, 1972, until his **termination** June 20, 1975.

The evidence against Shanks illustrates that as Maintenance Gang Foreman, he personally received money for work performed with equipment belonging to the Carrier, and manpower assigned under his supervision. Shanks used Carrier **employes** to transport railroad ties to his home. Shanks used credit cards belonging to the Carrier to purchase various items for his personal automobile. Shanks conducted an auction at his house and sold property which had belonged to the Carrier.

Claimant Gang Laborer Carnejo used credit cards and credit forms belonging to the **Carrier** for his own personal use.

Both Claimants were dismissed from the service of the Carrier, and they have appealed said dismissals as being unduly harsh and excessive and they ask us to return them to service.

The Union points out that Foreman Martinez was also investigated by the Carrier, but only assessed thirty demerits. It is argued that the parties were not all treated fairly and equally. The Carrier found that Martinez may have known about some of the incidents and failed to report them and was, therefore, assessed demerits. But the

Carrier found that Martinez did not actually commit the acts charged. The evidence supports the conclusion reached by the Carrier. We do not have a case where two employes are given one penalty for **an** infraction while a third party is given a lesser penalty for the same infraction. **The evidence** does not support the contention of the Union on this point.

It is urged by the Union that the Claimants have long tenures of service, good work records, and that they have learned their lesson and should be reinstated.

The evidence seems to indicate that the Carrier first learned of **the incidents** involved herein by the receipt of anonymous letters allegedly written by the other employes **on** the gang. It would **seem** that their fellow employes got tired of the actions of the Claimants and turned them in by providing anonymous advice to the Carrier.

If we followed the reasoning advanced by the Union and "gave the Claimants another chance", we would run the risk of setting a precedent whereby a long standing **employee** could be caught once and then returned to service with the admonition to steal no more.

We **wonder** what effect that philosophy would have on the work habits of the other employes.

The theory behind this **opinion** may be considered strictly punitive. Certainly it seems to reject the theory of rehabilitation. We would prefer, however, that it be considered as a deterrent. There are some who will quote the oft cited stories **of** pickpockets working the crowds at public hangings in England, as indicative that the punitive system is not, in fact, deterrent in nature. But, in the instant case, if the punishment of dismissal does not deter any other **employee** from this type of activity, it will, in fact, deter these two former employes.

The claim is denied and the discipline of discharge is not disturbed. This award **is** intended to illustrate that this Board **does not consider it proper** to lessen **discipline** where the overt acts of dishonesty are repeatedly perpetrated **with impunity**.

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 Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended June 21, 1934;

The jurisdiction of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Contract was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago Illinois, this 15th day of February 1978.