

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8993
Docket No. 8607
2-CR-MA-'82

The Second Division consisted of the regular members and in addition Referee George E. Larney when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation be ordered to restore Machinist J. A. Phillips to service and compensate him for all pay lost up to time of restoration to service at the prevailing Machinist rate of pay.
2. That Machinist J. A. Phillips be compensated for all insurance benefits, vacation benefits, holiday benefits, and any other benefits that may have accrued and was lost during this period, in accordance with Rule J-1 (e) of the prevailing Agreement which was effective April 1, 1976.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant, John a Phillips first entered the service of Carrier on date of May 2, 1977, and prior to his dismissal from service on date of November 20, 1978, he held a position as a Machinist at the Collinwood Diesel Locomotive Shop in Cleveland, Ohio.

By letter dated November 1, 1978, Carrier notified Claimant to attend a trial scheduled for November 9, 1978, for the purpose of addressing himself to the following charge:

"Insubordination.

Possession of a gun on Conrail property, specifically in Collinwood Diesel Locomotive Shop, on October 20, 1978, in direct violation of J. T. Dixon's posted Shop Letter of September 7, 1978."

Based on the evidence adduced at the trial, Claimant was adjudged guilty as charged and dismissed from service of the Carrier.

Carrier argues that while Claimant may have had authorization from other sources to carry a firearm, he had no authority whatsoever to be in possession of a gun on its property, as such conduct was in direct violation of the following posted instruction dated September 7, 1978 and placed on all its bulletin boards on the property on date of September 14, 1978:

"In order to protect the safety and well being of all concerned, no one, with the exception of company authorized security forces of governmental agents, shall have while on company property in his custody, control, possession or have access to a fire arm, knife or other object that could be considered a concealed weapon.

Violation of this directive may result in discipline."

Carrier asserts Claimant's insubordination stems from the disobeying the above directive. Carrier argues that by being in possession of a gun while on company property, Claimant has demonstrated a marked lack of regard for its rules and regulations and a definite lack of respect for the law and the rights of others. Carrier maintains insubordination of any nature is a serious offense warranting the imposition of severe discipline, and the possession of a gun while on company property, under the given circumstances, is an offense so grave that dismissal of the Claimant is both a commensurate, as well as, a justifiable discipline.

Carrier refutes Claimant's contention he was ignorant of the aforementioned posted instruction, arguing first that such contention lacks credibility and arguing further that such alleged ignorance does not alter the fact Claimant was governed by the directive and therefore cannot be excused from his responsibility to comply with the rule. Carrier notes too, that in his short tenure of service with the Company, Claimant was derelict in his duties on one previous occasion, specifically having received a formal letter of reprimand on September 25, 1978, for insubordination. Carrier believes Claimant's past and current deportment demonstrates a continued lack of regard for both discharging his duties in a responsible fashion and complying with its promulgated and established rules and regulations. For all the foregoing reasons, Carrier requests the Board deny the subject claim.

The Organization notes that at the time of the subject incident, Claimant was working part time as a security officer and was commissioned by both the City of Cleveland and the State of Ohio to carry the gun in question. The Organization relates that Claimant, due to circumstances beyond his control, was unable to present himself on company property on date of October 20, 1978, in civilian clothes and that immediately upon his arrival in full security uniform, he attempted to leave the weapon at Carrier's Police Office. This attempt, notes the Organization, was unsuccessful as no Police Officer was present at Carrier's Police Trailer. Additionally the Organization notes, that when Claimant was asked by Bowers, the Union Committeeman, to relinquish the gun, Claimant readily complied and Bowers in turn, handed over the weapon to a Carrier Police Officer. The Organization maintains Carrier has nowhere refuted

Claimant's account of the circumstances as set forth above and notes with interest that Carrier ultimately declined to file formal complaint against Claimant with the Cleveland Police for having in his possession a lethal weapon while on company premises. The Organization submits Claimant was unaware of the alleged posted instruction dated September 7, 1978, and therefore argues he did not knowingly or willfully violate the Carrier's rules and regulations. Additionally, in conjunction with this point, the Organization argues Carrier did not at the time of trial nor has it subsequently produced proof, Claimant was aware of the September 7th instruction. In sum, the Organization submits Carrier failed in its burden to prove its charges lodged against Claimant and therefore requests the Board to sustain the instant claim.

Based on a very careful examination of all the evidence of record we find the following:

1. Claimant was afforded a fair and impartial hearing and none of his due process rights were in any way prejudiced during the trial held on November 9, 1978.
2. Claimant's admission at the trial that he indeed was in possession of a firearm while on Company premises is viewed by us as the best evidence in support of Carrier's charge against him.
3. The Organization's argument regarding Claimant's ignorance of the September 7, 1978 instruction cannot stand as a valid defense for we are persuaded Claimant, as is true for all other employees has an obligation as part of his job responsibilities to keep himself informed of Carrier's Rules and Regulations. Therefore, we conclude, even if Claimant was, in fact, unaware of the subject posted instruction he was nevertheless bound by the rule.
4. Irrespective of Claimant's assertion he attempted to deposit the gun at Carrier's Police Office, we are persuaded he need not have entered Carrier's premises with a gun on his person in the first place. We accept Claimant's explanation he was late and could not therefore change out of his security guard uniform into civilian clothes before coming onto the Carrier's facility; but we do not accept the attendant proposition he had to retain his gun as part of the uniform. We are persuaded by the facts of this case that Claimant could have turned over his gun to the owner of the security agency he was working for as it was the owner who drove Claimant to Carrier's facility on the morning in question.
5. We are persuaded too, given Claimant's other charge of insubordination for which a scheduled trial was held on the date Claimant showed up with the gun, resulting in the subject charge here under consideration, that his overall conduct and deportment should be held to be highly questionable, especially in view of the very brief time he was employed by Carrier.

As we can find nothing in the record of a mitigating nature, we are compelled to support the well established principle that we will not substitute our judgment for that of Carrier's in matters of discipline. It is therefore our determination to sustain the Carrier's position.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of March, 1982.