

The Second Division consisted of the regular members and in addition Referee William O. Hearn when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

Appeal of dismissal from service in all capacities of Electrician L. L. Walters on October 11, 1988 by the Consolidated Rail Corporation at Enola, Pennsylvania.

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 employes 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.

On September 28, 1988, an Investigation was held for Claimant who was charged with "carrying a loaded concealed hand gun in right hip pocket without a permit while on duty September 14, 1988, at the Enola Locomotive Terminal."

On page 3 of the transcript, a Carrier witness was questioned by Claimant's representative:

"Q. You stated it was Conrail policy that you are not allowed to carry a hand gun on Conrail property.

A. That is correct.

Q. Is it written down as fact?

A. Not in our safety book, however according to Conrail policy and my previous dealings with them, I was informed that employees are not permitted to bring or carry fire-arms on company property."

In reviewing the Hearing transcript several times, we are unable to find any of Carrier's witnesses who could testify that Carrier had a written Safety Rule prohibiting possession of weapons on the property.

As to Carrier's contention, Claimant did not have a permit to carry the weapon, this is and was a matter for the courts to decide. This Board does not have the authority to decide that issue.

Section 3, First (1) of the Railway Labor Act reads in part:

"*** disputes between an employee or groups of employees and carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions ***."

See Second Division Award 5954.

In Second Division Award 1122 it was stated:

"*** This Board cannot make or amend a rule. It is bound by the agreements which the parties have made ***."

The Board has heretofore held that such limitations have been placed on it by law, and that it does not have the authority to write new rules.

This Board would like for the Claimant to clearly understand we do not condone his action and that his Claim is being sustained based upon the language of the Railway Labor Act and prior Awards of this Board. Claim sustained as set forth in paragraph (e) of Rule 7-A-1 of the controlling Agreement.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1990.

CARRIER MEMBERS' DISSENT
TO
AWARD 11855, DOCKET 11804

(Referee Hearn)

Claimant was discovered carrying a loaded 2-shot derringer concealed in his back pocket while on company property and on company time. An Investigation was held during which Claimant openly admitted he was carrying the loaded derringer in his back pocket, and that he did not have a permit to carry a weapon. He was discharged accordingly.

He was reinstated with pay by this Board on the sophistic theory that Carrier did not have a written rule and/or policy precluding employees from carrying concealed handguns, loaded, on the property; thus, it had no basis for the charges, and Claimant could not be disciplined for such a reprehensible act.

The Majority then concludes this travesty by sustaining the Claim based allegedly upon the language of "...prior awards of the Board...." What "...prior awards of this Board..." the Majority has reference to, only they know, but prior Awards have upheld dismissal in like circumstances.

Second Division Award 6938:

"In fact we have held that the mere possession of firearms while on Carriers' premises justifies dismissal (see Award 6479 and Third Division Awards Awards 20199 and 20673)."

Second Division Award 9929:

"...Possession of a firearm on company property is a serious offense...."

Third Division Award 25016:

"...a number of awards upholding the dismissal of employees for being in the possession of firearms, while on company property, have been issued by this Division...."


Third Division Award 26043:


"...Dismissal for the illegal possession of the loaded weapon is not excessive."


Third Division Award 26250:

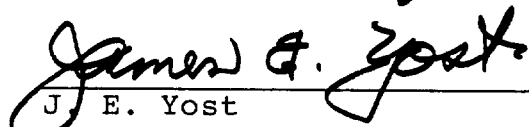
"...Claimant was in possession of a loaded firearm on Carrier's property...we are compelled to uphold the Carrier's decision to discharge Claimant."

Award 11854 is so arbitrary, so capricious, so off-the-wall, that it is unenforceable and certainly does not establish any precedent to be cited in any other dispute.


R. L. Hicks


P. V. Varga


M. W. Fingerhut


J. E. Yost


M. C. Lesnik