



Award No. 15532
Docket No. MW-16146

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don J. Harr, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

MONON RAILROAD

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

(1) The dismissal of Mr. O. C. Copas, effective May 6, 1965, was without just and sufficient cause and wholly disproportionate to the unproven charges placed against the claimant. (Carrier's File 15 606.)

(2) Mr. O. C. Copas be reinstated to his former position, the charge stricken from the record and payment be allowed for working hours actually lost, less any amount he may have earned in other employment as per Rule 19 (c).

OPINION OF BOARD: On April 20, 1965, while helping push a motor car to start it, Claimant tripped over a bootleg wire and fell. When he fell, his right hand hit the rail and was run over by the right rear wheel of the motor car. Claimant was charged with violation of Rules 9 and 27-I of the Safety Rules governing Maintenance of Way Employees. Investigation was held on April 28, 1965. On May 6, 1965, Claimant was notified of his dismissal from service. Appeal was properly progressed and was denied by Carrier's highest designated officer for handling such matters.

General Roadmaster Johnson conducted the investigation. On page 9 of the transcript of the investigation the following questions and answers are found:

24. "Q. Do you think you lived up to these rules?

A. No, sir; I wasn't living up to the book of rules.

29. Q. Are you satisfied with this investigation; has it been conducted in a fair manner and according to the rules, Mr. Copas?

A. It is satisfactory with me."

The Claimant was represented at the hearing, but his representatives offered no witnesses or evidence and had no cross-examination.

We feel that the Claimant's admission supports a finding of guilty as charged.

We must next consider the question of the measure of discipline assessed.

Award 10429 (Rock) states:

"It is not the function of the Board to determine the quantum of discipline to be imposed in any given case. That is the responsibility of the carrier, and unless the record shows that its action was arbitrary or capricious, or that it acted in bad faith, its judgment should not be set aside. 9422 (Bernstein), 9935 (Weston), 9511 (Elkouri). The record before us does not support such a finding."

Carrier belatedly introduced a Complaint filed in the United States District Court for the Northern District of Illinois, Eastern Division. This Complaint was filed under the Federal Employers Liability Act. The injury herein complained of occurred on September 18, 1963. This was not raised during the handling on the property, and will not be considered by this Board.

Even rejecting this complaint we feel the Carrier had ample grounds to justify its action. Carrier properly reviewed the Claimant's past record to determine the discipline to be assessed.

Award 12126 (Dolnick) states:

"An employee's past work record may not be considered in determination of his guilt of the charges brought against him, but it may be considered in assessing a penalty."

We will deny the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

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

That the Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April 1967.

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