

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19568  
Docket Number MW-19820

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Louisville and Nashville Railroad Company

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

(1) The dismissal of Machine Operator B. E. Dowell was without just and sufficient cause and on the basis of unproven charges (System File 1-12/D-103743 F-306-18).

(2) Machine Operator B. E. Dowell be reinstated with all rights unimpaired and that he be reimbursed for all wage loss suffered all in accordance with Rule 27(f).

OPINION OF BOARD: The claimant was dismissed from Carrier's service on November 4, 1971, on charge reading in part:

"You are charged with being absent from duty on September 8, 1971 and not being available for work because of being lodged in jail during this time, and with violation of Rule G of the Rules and Instructions of the Maintenance-of-Way Department of the L&N Railroad Company."

The part of Rule G covered by the charge provides that:

"Employees must maintain good moral character, and avoid violations of the law, and failing to do so, will be subject to dismissal."

We have reviewed the transcript of the investigation conducted on September 24, 1971, and find no justifiable reason for disturbing the action taken by the Carrier. The record shows that the Claimant did not protect his assignment on September 8, 1971, and part of the day on September 9, 1971. His stated reason for not doing so was that he had been arrested and jailed on charges of drunken driving and reckless driving. Being held in jail was, of course, the consequence of his own personal conduct and cannot be regarded as justifiable reason for not protecting his assignment. Moreover, the claimant later plead guilty in court to amended charges of reckless driving and disorderly conduct.

In the handling on the property it was brought out that claimant had not only been dismissed for a similar offense in July 1968, but also had been arrested and convicted on drunk driving charges on prior occasions in the last three years.

The claim is denied.

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**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 approved June 21, 1934;

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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: E. A. Killam  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1973.