

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20114
Docket Number CLX-20295

Dana E. Eischen, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(REA Express, Inc.

STATEMENT OF CLAIM: Claim of the District **Committee** of the Brotherhood (Case No. 184) that:

(1) The Agreement governing hours of service and working conditions was violated at Newark, N.J. when on Tuesday, May 9, 1972, R.E.A. Management discharged Horace Brown from the service of the Carrier, and in so doing, acted unjustly, unfairly and unreasonably, and:

(2) Furthermore, the decision of dismissal was extremely harsh, since the record of the investigation discloses that the claimant was severely disciplined prior to the investigation, and:

(3) Claimant Horace Brown shall now be returned to service with seniority unimpaired and compensated for all time lost.

OPINION OF BOARD: Claimant, an over-the-road driver was discharged on May 9, 1972 following investigation into charges contained in a letter dated May 1, 1972, as follows:

"You are to report to the Line Haul Manager's office, REA Express, 400 **Delancy** Street, Newark, **N.J.** at 10:00 A.M., Friday, May 5, 1972 for an investigation under Rule 11-A of the Working Agreement.

You are charged with violation of Rule 870 of the General Rules and Instructions which reads as follows:

'Rule 870: Vehiclemen must not allow any person, other than assigned **employees** of the Company, to ride on their vehicles except by specific permission of the Agent.'

Specifically, on Saturday, April 29, 1972, you **were** dispatched to Temple Hills, Md. On arrival at that terminal you were found to have an unauthorized passenger in your vehicle - Tractor No. 111013.

I call your attention to Section II, paragraph (g) of Form 3200, 'Rules Governing Operators of Motor Vehicles' which reads as follows: 'Allow no one to drive or ride in vehicle assigned to you without proper authority.'

"You are being held out of service until the results of the investigation can be determined.

You may be represented by a duly accredited representative."

The facts surrounding this claim are not in dispute. Claimant admitted at the investigative hearing that he had transported in his truck an unauthorized passenger on his run between Newark, New Jersey and Temple Hills, Maryland on the night of April 29, 1972. The **uncontroverted** record shows that he was removed from service by the Line Haul Manager in Temple Hills, Maryland at **2:30 A.M.** on April 30 and told to get back to Newark, New Jersey by his own devices as best he could. Accordingly, Claimant walked and hitchhiked to Philadelphia, Pennsylvania, whence a relative transported him to **Newark** where he arrived some thirty **(30)** hours later.

Petitioner contends that management by the above-described action of the Line **Haul** Manager administered discipline without applying the proper rules. Upon a careful review of the record and the applicable Agreement, we find that the situation in which Claimant was placed by local management on April 30, though deplorable, was not in and of itself discipline without a hearing.

Petitioner further grounds its appeal of Claimant's discharge on the premise that the quantum of punishment was harsh and unreasonable, particularly in light of Claimant's unblemished service record with the Company.

Based on the entire record and considering all the circumstances in the case, we find that Claimant received a fair and impartial investigation and that he was subject to discipline; but we consider permanent dismissal to be excessive in this case and hold that Claimant should be restored to service with seniority and other rights **unimpaired**, but without pay for time lost while out of service.

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

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That the Agreement was violated.

A W A R D

Claim sustained to the extent and in the manner set forth in the
Opinion,

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: C. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 25th day of January 1974.