

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22371
Docket Number MW-22478

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of-Way **Employes**
(St. Louis-San Francisco Railway **Company**)

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

(1) The dismissal of **Trackman** P. R. Schofield **was without** just or sufficient cause and it was extremely disproportionate to the offense with **which** charged (System File **B-1199**).

(2) **Claimant** Schofield **shall** be returned to service and allowed all of the benefits prescribed within **Agreement Rule 91(b) (6)**."

OPINION OF BOARD: **Claimant** was charged with violating **Maintenance of Way** and Structures Rules **652** and **910** which are referenced **hereinafter:**

Rule 652 - "Employes who are **careless** of the safety of themselves or others **will** not be continued **in the service."**

Rule 910 - "Vehicles will be used **only** for **Company** business. . . . unauthorized persons must not be carried **in** vehicles."

An investigative **hearing** was held on **May 27, 1977** wherein he was found guilty of the specifications and subsequently dismissed from service, effective, April 23, **1977**.

The **Organization** argues **on appeal** that Claimant was **terminated** without just or sufficient cause and in effect suffered a penalty that was **incommensurate** to the assertive violations.

Accordingly, consistent with our appellate responsibility, we **have** carefully **examined** the investigative record to determine whether Claimant was afforded a fair and impartial hearing. We find **nothing** in the record, after this review, that suggests bias or partiality.

Claimant had **ample** opportunity to present an effective affirmative **defense**.

In the **instant** case, **Claimant** had requested permission from the **Assistant Roadmaster** to drive the bus assigned to the System **Gang** from Stoutland to Sleeper, Missouri. The distance **was** seven **(7) miles** on a road **which paralleled** the railroad tracks. It was an uncomplicated short distance route.

Contrary to the explicit prohibitions set forth in Rules 652 and **910, (supra)** Claimant transported two (2) unauthorized *passengers*, who were in the vehicle at the time of the accident. One of them suffered a small cut over the right eye and a **small bruise on the** right side of the **nose**. The vehicle **was** severely damaged.

Claimant, who also sustained minor **injuries, was** taken to the hospital for injury diagnosis **and** treatment. A urine analysis revealed positive drug **findings**.

While Claimant is not being charged for **drug** or narcotic **usage**, the fact pattern configuration of his actions and condition **are** dramatically apposite Carrier's safety requirements. The **promulgation** of detailed and clearly stated safety rules and regulations like **Rules 652 and 910** are specifically designed to **prevent the kind** of the problems that we are **now** considering.

It would **ill** serve the public interest or the integrity of these rules, if we disregard **their** application **in** the face of compelling confirmatory evidence.

Claimant picked up two (2) unauthorized persons, which by itself is a serious rule violation. It was further compounded by the accident **and** urine analysis results. We find no **justification**, given **these** findings, to **modify** or Set aside **Carrier's dismissal determination**. We will thus deny the claim.

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 **Employes involved in this** dispute are respectively **Carrier** and **Employes** 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: *AW. Paulson*
Executive Secretary

Dated at Chicago, Illinois, this **30th** day of March **1979.**