

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23113
Docket Number MS-23259

Paul C. Carter, Referee

PARTIES TO DISPUTE: { Phillip Bowling
{ National Railroad Passenger Corporation

STATEMENT OF CLAIM: "The questions to be presented and briefed are:

1. Whether the decision to terminate Mr. Bowling's employment is supported by clear and convincing evidence?
2. Whether Mr. Bowling was properly charged, in accordance with respondent's General Rules of Employee Conduct?
3. Whether the penalty of dismissal was excessive under the circumstances?
4. Whether Mr. Bowling's termination was pretextual to mask other unlawful, discriminatory motives?
5. Whether Mr. Bowling was competently represented by his union at the disciplinary hearing on June 1, 1978?
6. Whether respondent improperly considered outside factors in arriving at its decision to terminate Mr. Bowling's employment?"

OPINION OF BOARD: The record shows that claimant entered the service of the Carrier in October, 1973, and at the time of his dismissal, held the position of Red Cap at the Carrier's Union Station in Washington, D. C. On May 13, 1978, he failed to report for his regular assignment, with hours 6:30 A.M. to 3:30 P.M. He was notified by certified letter dated May 24, 1978, to report for investigation at 10:00 A.M., June 1, 1978, on the charge:

"Violation of that part of National Railroad Passenger Corporation General Rule 'K' reading: 'Employees must report for duty at the designated time . . .'

Specification(1): In that on Saturday, May 13, 1978, you failed to report for your assignment as red cap, Union Station, Washington, D. C. at the appointed time."

The investigation was conducted as scheduled. Claimant was present throughout the investigation and was represented by a Member of the Protective Council, Brotherhood of Railway and Airline Clerks, in accordance with Rules 6-A-1 and 3-F-2 of the applicable Agreement. Following the investigation, claimant was notified of his dismissal from service on June 7, 1978, which letter also set forth his prior service record. A copy of the transcript of the investigation has been made a part of the record.

We have examined the entire record and the several arguments advanced by the Petitioner and the Respondent, and find that the case is properly before the Board. From our review of the record, we find that the Carrier met its burden of proof against the claimant. Awards too numerous to require citation uphold the right of the Carrier and this Board to consider an Employee's prior service record in discipline cases.

Considering the entire record, there is no proper basis for disturbing the discipline imposed by the Carrier.

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 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 was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

AW Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1981.

