NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23996
THIRD DIVISION Docket Number SG-23968

Lamont E. Stallworth, Referee

PARTIES IN DISPUTE: (Brotherhood Of Railroad Signalmen
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(Southern Railway Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company, et al.:

On behalf of B. M. Harris, who was dismissed from his Signal Maintainer position at St. George, S. C., for restoration to service with seniority rights unimpaired, pay for all time lost between November 13 and 28, 1979, and pay for all time lost from December 20, 1979, until reinstated, account Carrier's decision to dismiss him was harsh and excessive and because the agreement was violated, particularly Rule 23."

(General Chairman file: SR-152. Carrier file: SG-426)

OPINION OF BOARD: On October 15, 1979 the Claimant, B. M. Harris, was assigned by bulletin to the traveling signal maintainer position at St. George, South Carolina. On October 29, 1979 he reported to his new headquarters point under the supervision of Mr. R. V. Duncan, C&S Supervisor.

At about 4:55 AM on November 13, 1979 the Claimant was involved in a single vehicle accident. At 6:10 AM Claimant Harris called Supervisor Duncan informing him that he had been involved in an automobile accident while driving the Company truck between Clinton and Columbia, South Carolina.

On the same date, November 13, 1979, Claimant was notified that he was relieved from service of the Company pending an Investigation in connection with the charges of: (1) failure to comply with instructions from his Supervisor and General Supervisor prohibiting the use of any company vehicle for personal transportation, and (2) violation of Rule #6, Company vehicles will be used only for business of the railway. Subsequent to the investigation held on December 20, 1979, Claimant Harris was notified by letter dated January 4, 1980 that he was dismissed from all service, effective November 13, 1979. The claim was handled in the usual and prescribed manner on the property and, failing resolution, is before the Board.

The Carrier maintains that the testimony of various witnesses, in addition to the Claimant's own admission of guilt, renders the matter of guilt to be Indisputable.

Supervisor Duncan testified that the Claimant was instructed by three different supervisors that he was, (1) not to use the Company truck for personal use and (2) he was to park the Company truck at the depot when he got off duty. Supervisor Duncan's testimony was corroborated by the testimony of Supervisor Davis, General Supervisor Stepp and Traveling Signal Maintainer Metcalf.

The Carder further asserts that in Claimant's testimony, he admitted guilt. Claimant Harris testified as follows:

"Q: When you took the company truck upon Monday, the 12th, and started back with It on Tuesday the 13th, you had not obtained permission from any supervisor to use this truck?

A: No sir, I had not.

Q: Do you have any statement to make for the record as to why you used the company vehicle after receiving these instructions?

A: Yes, I do.

I was given the impression that I could get my transportation and I knew that1 went against that rule of not supposedly using the truck. I don't know what kind of. thinking I was doing, I drove the truck - not home - but somewhere in the designated area and then got picked up. Like I said, I understood the instructions they gave to me, and told me not to get the truck, and I didn't expect an accident would happen, so I accept all the responsibility."

The Carrier further maintains that it did not violate Rule 23 when the Claimant was released from his duties prior to the investigation. Rule 23 states in part, "After charge or charges are made and pending investigation and decision, employee may be relieved from service, to protect life or property..." The Carrier contends that Claimant's actions, which caused extensive damage to a Company truck and greatly endangered his own safety, demonstrated that the Claimant had a total disregard for the authority of his supervisors and Company policy.

The Carrier contends that dismissal was warranted, especially given the fact that the Claimant had been previously disciplined, in July 1979, for making unauthorized motel charges against the Company.

The Organization maintains that the Carrier violated Rule 23 when it dismissed Claimant without an Investigation, The Organization contends that the Carrier offered no proof that if Claimant had worked until the Investigation that he would endanger life or property.

Even if there had been no violation of Rule 23, the Organization maintains that the dismissal was harsh and excessive punishment under the circumstances. There is no evidence to indicate that the Company ever made known to Claimant the consequences if he did use a company truck for personal reasons.

Upon careful consideration of the record, the Board concludes that the Claimant was given a fair and impartial hearing. The Board further concludes that' there is substantial evidence on the record to support the charges. The record inaides Claimant did use Company vehicle for his personal use which is a violation of Rule #6. In these circumstances the Board denies 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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That thls 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: Acting Executive Secret-my
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of September 1982.