

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24358
Docket Number Ear-24539

Paul C. Carter, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
 { Union Pacific Railroad Company

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

(1) The dismissal of Sectionman R. L. McDermott for alleged violation of 'General Notice, Rule "B" and Rule 700' was without just and sufficient cause (System File 5-18-11-14-55/013-210-Mc).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was employed by the Carrier as sectionman at North Platte, Nebraska, and had been in service as a sectionman from July 5, 1977.

The record shows that on August 26, 1980, claimant, while on duty as sectionman, was apprehended by civil authorities, taken into custody, charged with forgery, second degree, a class 3 felony, and incarcerated with bond set for \$10,000.00. On August 27, 1980, claimant was notified by Roadmaster P. A. Valesco:

"While working as sectionman on Section #1282 at North Platte you were apprehended by Civil Authorities at approximately 9:30 A.M., removed from the property, charged with forgery, second degree, Class 3 felony, and incarcerated under a \$10,000.00 bond, therefore, in accordance with Rule 48(L) of the Agreement between the Union Pacific Railroad and the Brotherhood of Maintenance of Way Employees you were dismissed from service at 9:30 A.M., Tuesday, August 26, 1980."

Rule 48(L) of the Agreement, referred to in the letter of August 27, 1980, is part of the Discipline Rule of the Agreement, and reads:

"(1) Employees need not be granted a hearing prior to dismissal in instances where they refuse to work, voluntarily leave the work site without proper authority or involuntarily leave their job as a result of apprehension by civil authorities, willfully engage in violence or deliberately destroy Company property. Such employees may, however, make request for a hearing relative their dismissal, and request therefore must be made within fourteen (14) calendar days from date of removal from service:

On August 29, 1980, claimant's representative requested a formal hearing in his behalf, which was scheduled for September 26, 1980. On September 23, 1980, claimant was notified by the Roadmaster:

"Referring to my letters dated August 27, 1980 concerning your dismissal from service per Rule 48(L) of the Agreement between the Union Pacific Railroad and the Brotherhood of Maintenance of Way Employees and my letter of September 19, 1980, advising that investigation has been scheduled for Friday, September 26, 1980, at 10:00 a.m. at the Roadmaster's office in North Platte, Nebraska you have been charged with violation of the following rules in connection with your dismissal: General Notice, Rule 'B' and Rule 700 as contained in Form 7908, 'Rules Governing Duties and Deportment of Employees, Safety Instructions and Use of Radio.' "

The rules referred to in the Roadmaster's letter of September 23, 1980, were read into the investigation and are quoted in the Carrier's submission. We see no necessity for repeating them here.

After being postponed, the hearing or investigation was held on October 23, 1980. Claimant was present at the hearing and was represented. A copy of the transcript of the hearing has been made a part of the record, as has the correspondence covering the appeal of the claim on the property, following notice to the claimant on November 5, 1980, that his dismissal from the service was upheld.

The Carrier questions the timeliness of the filing of Organization's notice to file an ex parte submission. The record shows the notice was stamped as received by the Third Division on February 12, 1982. The notice was timely filed.

The Carrier also contends that the claim before the Board varies from the claim pursued on the property. While the wording of the claim before the Board may vary slightly from the claim filed and appealed on the property, the substance of the claim is the same. The claim has not been enlarged upon and the Carrier has not been misled.

The Carrier contends further that the claim is procedurally defective because the Organization did not specifically notify the Division Engineer of the rejection of his decision, but simply furnished the Division Engineer with a copy of its appeal letter to the Chief Engineer. The Board has held that the furnishing of a copy of the letter of appeal to the officer whose decision is being appealed constitutes compliance with the rule. See Award No. 14624 and Award 14021 cited therein. See also Decision No. 14 of the National Disputes Committee, dated Chicago, Illinois, March 17, 1965.

In the handling of the dispute on the property the Organization's contentions were that Carrier abused the intent of Rule 48(L), and violated Rule 48(a) of the Agreement when it disciplined claimant prior to a formal hearing. The Board cannot agree with such contentions. Rule 48(L), a part of the discipline rule, is specific in providing that "Employees need not be granted a hearing prior to dismissal in instances where...they voluntarily

leave the work site without proper authority or involuntarily leave their Job as a result of apprehension by civil authorities..." This portion of the rule fits the present case. Upon a request for a hearing, such hearing was held as provided for in the last sentence of Rule 48(L). We find, therefore, that no violation of Rule 48(L) or Rule 48(a) occurred, as contended by the Organization in the on-property handling.

In the handling of the dispute on the property, it developed that at a trial held on September 26, 1980, in Hooker County Court at Mullen, Nebraska, the charge against claimant was reduced to forgery, second degree misdemeanor to which claimant pled guilty, was fined \$250.00, placed on probation for one year, and ordered to make restitution in the amount of \$850.00.

In its submission to the Board the Organization makes contentions that were not made on the property. It contends that the Carrier failed to make any specific reference to the provisions of the rules on which it based its charges against claimant, and that no evidence was presented at the hearing to prove violation of Carrier's General Notice, General Rule "B" and General Regulation 700. The Organization also contends before the Board that claimant was denied a proper appeal as the hearing officer was also the initial officer of appeal. None of these contentions was raised in the on-property handling, and may not be raised for the first time before the Board. It is well settled that general allegations may not be made on the property and specifics provided when the case is before the Board.

We have carefully reviewed the transcript of the hearing and find substantial evidence to support the carrier's decision of claimant's guilt, and, considering claimant's prior record, which was far from satisfactory, Carrier's action in dismissing claimant from service was not arbitrary, capricious, or in bad faith. The claim will be denied.

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.

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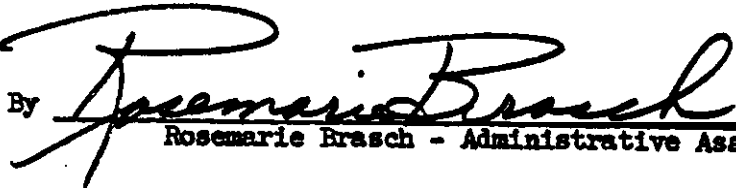
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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of May 1983.

