

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24913
Docket Number CL-25112

Paul C. Carter, Referee

PARTIES TO DISPUTE: (*(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees*
(*Grand Trunk Western Railroad Company*

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

(1) Carrier unjustly dismissed from the service Mr. H. Arterberrie, Machine Operator-Yard Clerk, Durand, Michigan, as result of investigation held on May 3, 1982, in which the transcript failed to support the decision of the Carrier in the discharge of Mr. Arterberrie in the caption of the investigation.

(2) The Carrier shall now be required to reinstate Mr. Arterberrie with all rights unimpaired with compensation for any wage losses incurred from May 13, 1982.

OPINION OF BOARD: *Claimant was employed as a Machine Operator-Yard Clerk at Durand, Michigan, with a seniority date of May 15, 1976. On March 19, 1982, he was notified to attend formal investigation on the charge:*

***** to determine your responsibility for alleged violation of:*

- 1. GT General Rules 9, 14, and 20 of the GT General Rules for Employees Not Otherwise Subject to the Rules for Conducting Transportation by displaying an uncooperative attitude toward Yardmaster Welch and Engineer Shepard and exhibiting abusive actions toward Yardmaster Welch.*
- 2. GT General Rule 2 of the GT General Rules for Employees Not Otherwise Subject to the Rules for Conducting Transportation resulting in alleged personal injury to yourself.*
- 3. GT Safety Rules Form SRC-1 'A' of the notice and 2002 by driving GT vehicle #085-B at excessive speeds and in a careless manner through a residential neighborhood and on company property while transporting Train 410's crew to their train.*
- 4. GT Safety Rules Form SRC-1, 1909 and 1911 by deliberately blocking the doorway so Yardmaster Welch could not leave the Yardmaster's office.*

"between approximately 1800 and 1830 on Saturday, March 27, 1982, while working your 1500-2300 Machine Operator-Yard Clerk assignment at Durand, Michigan."

GT General Rules 9, 14, and 20 read:

- "9. The railroad and railroad jobs survive by selling service. Prompt, courteous and efficient service to customers, the public and fellow employees is the primary function of each employee. Service also includes providing safe, prompt and friendly transportation."
- "14. While on duty, employees must devote themselves exclusively to the company's service, render every assistance they can in carrying out the Company Rules and Instructions, and report to a Supervisor any violation thereof."
- "20. Faithful adherence to these rules in the performance of our jobs is in the best interest of each employee and in turn of his or her fellow employees. Working professionally as a team with courtesy, safety and service utmost in mind will do much to insure the company's success and our own livelihood."

GT Safety Rule Form SRC-1 "A" -

- "A. Safety is of the first importance in the discharge of duty."

GT Safety Rule 2002 -

- "2002. Personnel operating company vehicles must comply with all governmental traffic laws and regulations."

GT Safety Rules, Form SRC-1, 1909 and 1911 -

- "1909. Approach doors with caution and open slowly as someone may be on the other side. Stand or walk clear of doorways to avoid collisions with others."
- "1911. Keep to the right in approaching corners and walk slowly to avoid others coming from the other direction."

The investigation was scheduled for April 2, 1982, but was postponed to May 3, 1982. A copy of the seventy-five page transcript has been made a part of the record. Claimant was represented in the investigation by the Local Chairman of the Organization, who, along with the Claimant, raised many of what may properly be termed petty objections, none of which, or all of which, had any real significance, except possibly to prolong the proceedings. On May 11, 1982, Claimant was notified of his dismissal from service for charges 1, 3 and 4, as set out in the letter of charges.

We have carefully reviewed the lengthy transcript of the investigation, and find substantial evidence in support of the charges for which Claimant was dismissed.

The yardmaster testified that he gave the Claimant the keys to GTW van and told him it was time to go to the roundhouse, get the engine crew and take them to their train; that Claimant told him that he was not transporting crews in the van; that he asked Claimant four times if he was refusing to get the crew, and each time the Claimant responded "I cannot hear you." The yardmaster's testimony was verified by the testimony of a Patrolman.

The yardmaster also testified that Claimant blocked the doorway when he (the yardmaster) attempted to enter the lunch room; that he asked Claimant to let him by and Claimant responded: "I will move when I get good and ready." The Patrolman again verified the testimony of the yardmaster. The Patrolman also testified that Claimant used abusive language to the yardmaster.

The record shows that after talking to the Assistant Road Foreman of Engines, Claimant agreed to transport the crew. The engineer, of the crew transported, testified that he and the brakeman, also being transported, objected to the speed that claimant was driving the van, and Claimant informed them "if we didn't like it we could get out and walk." There was also testimony by the engineer that Claimant drove in a reckless manner and exceeded the speed limit in a 25-mile speed zone through a residential neighborhood. There were conflicts in the testimony as between the Claimant and the crew members being transported. However, it is well settled that this Board does not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Such functions are reserved to the hearing officer. The Board may not reverse the Carrier's determination merely because of conflicts in testimony.

Claimant's actions in the present case, coupled with his prior discipline record, which was far from satisfactory, warranted the disciplinary action taken by the Carrier. 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 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

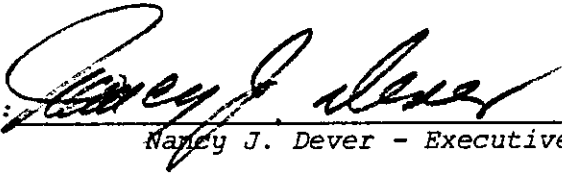
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1984.