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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25982
Docket Number MW-25914

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Maine Central Railroad Company

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

(1) The dismissal of B&B Carpenters J. W. Glynn and L. F. Gower was arbitrary, capricious, unwarranted and in violation of the Agreement (Carrier's File 011.6/N-8 2400).

(2) The claim, as appealed by General Chairman J. Lattanzio on August 12, 1982 to Manager-Personnel, Labor Relations and Safety A. N. Tupper, shall be allowed as presented because said claim was not disallowed by Mr. Tupper in accordance with Rule 45.

(3) As a consequence of either or both (1) and/or (2) above, Claimants J. W. Glynn and L. F. Gower shall be exonerated of all charges, compensated for loss of wages, returned to service without loss of seniority rights, vacation rights or any other rights or benefits which they enjoyed prior to their dismissal and the Carrier shall be responsible for any medical payments which are not covered through the medical and health benefits policy as a result of the claimants' dismissal."

OPINION OF BOARD: The two Claimants were formerly Bridge and Building Carpenters employed by the Carrier, whom the Carrier contends, were found, with their Foreman, by their Supervisor while they were drinking intoxicants in a restaurant during normal working hours on January 27, 1982. Following a Hearing conducted on February 11, 1982, the two Claimants and the Foreman were discharged on February 23, 1982. The General Chairman of the Organization appealed the dismissal decision in the usual manner up to the Manager-Personnel, Labor Relations and Safety, the Carrier's highest designated Appeals Officer, on August 12, 1982.

Subsequent thereto, the Carrier offered to reinstate the Claimant on a leniency basis, without compensation for lost time and with certain restrictions applicable to each individual. The Foreman accepted the offer of reinstatement on a leniency basis while the two Claimants herein did not.

The Organization asserts that Carrier's letter of September 7, 1982 does not constitute a disallowance in accordance with Rule 45.

The Board finds and holds that the letter of September 7, 1982, to the General Chairman of the Organization by Carrier's Manager-Personnel, Labor Relations and Safety, in which the serious Rule violations were pointed out, did constitute a decision as contemplated by Rule 45(1)(c) of the Agreement,

notwithstanding leniency being conditionally extended at the request of the General Chairman. The record of handling on the property is convincing that the letter of September 7, 1982, was accepted as a decision by the parties authorized to interpret the Agreement, the highest designated Officer of Appeals for the Carrier and the General Chairman of the Organization.

Both parties make additional procedural arguments. However, under the circumstances, and due to the nature of the arguments, it would be proper to consider this dispute on its merits.

Based on the entire record, the Board concludes that substantial evidence was adduced at the investigation in support of the charges against each Claimant. Therefore, the Claim is 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. Dover - Executive Secretary

Dated at Chicago, Illinois, this 26th day of March 1986.

