

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28086
Docket No. SG-28011
89-3-87-3-568

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Union Pacific Railroad Company (MP)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company (MP):

On behalf of Signalman M. G. Burks, for reinstatement to service with all lost time and benefits restored, beginning August 11, 1986, account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 28, when it dismissed him, did not prove him guilty as charged, and gave him excessive discipline." Carrier file 860100. General Chairman file 87-11-TP

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was employed as a Signalman. On August 12, 1986, Claimant was notified to attend a formal Investigation in connection with the charge:

"to develop the facts and place your individual responsibility, if any, in connection with your alleged failure to protect your assignment at 7:00 A.M. on August 11, 1986, and for your allegedly being under the influence of intoxicant while on company property at 7:00 A.M. August 11, 1986."

The Hearing took place on August 20, 1986, and, as a result, Claimant was dismissed from Carrier's service. The Organization thereafter filed a Claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to protect his assignment and other Rule violations.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find the action taken by the Carrier to have been unreasonable, arbitrary, or capricious.

In the case at hand, the Claimant was properly found guilty of failing to protect his assignment and being under the influence of some intoxicant while on Carrier property. Although those are serious offenses, this Board finds that the Carrier's termination of Claimant was excessive. Therefore, this Board finds that the Claimant shall be reinstated to service, but without backpay.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deva - Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1989.