

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Transportation Communications International Union  
PARTIES TO DISPUTE: (  
(Delaware and Hudson Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10210) that:

1. Carrier violated the Agreement between the parties when on August 22, 1986 it dismissed Crew Dispatcher J. M. Zullo from service of the Carrier in an arbitrary and capricious manner and without just cause.

2. As a result of such arbitrary and capricious action, Carrier shall now be required to reinstate Crew Dispatcher J. M. Zullo to the Carrier and pay him for all time lost eight (8) hours per day, commencing August 22, 1986 and continuing for each and every day until he is reinstated to the service of the Carrier.

3. Carrier shall further be required to clear Claimant's record of the charges against him and expunge any and all reference to said charges and subsequent dismissal from service."

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.

An Investigation was held on July 1, 1986, into the alleged failure of the Claimant to obey a direct order given by a Carrier officer during the investigation of an incident in which Claimant was a suspect. Following postponements, a Hearing was held on August 13, 1986, to consider the charge of alleged insubordination. On August 22, 1986, following consideration of the transcript of the Hearing, Claimant was notified that he had been found guilty as charged and that he was dismissed from the service of the Carrier.

The record before this Board indicates that the Carrier was investigating a serious act of harassment. In cooperation with other police agencies Claimant had been requested to read a statement into a tape recorder. In the instant circumstances the test was appropriate and the Claimant refused.

The norm in this industry is that there be substantial evidence to support a conclusion of guilt. The Claimant admits in the record that he was clearly informed that his failure to take the test would be insubordination and would result in removal from service. Although Claimant requested a lawyer, the record is unrefuted that he was given that opportunity and made no phone call. Given his actions the finding of guilt is substantiated.

This Board has carefully reviewed the procedures, charge, transcript and the issues discussed and considered on the property. We can find nothing that would in any way negate Carrier's position in the whole of this case. Evidence of a prior problem and the seriousness of the charge leaves no basis for judging the discipline assessed by the Carrier as unreasonable, arbitrary or capricious. Insubordination is an action which often results in dismissal (Third Division Award 21059; Second Division Award 7643). In the circumstances herein, the Board will leave the Carrier's action undisturbed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1990.