

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(Portland Terminal Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10413) that:

(1) Restore Mr. F. S. Schmitz to service of the Carrier with all seniority, vacation and other rights unimpaired.

(2) Pay Mr. F. S. Schmitz for all time lost commencing on April 22, 1989, and continuing for each and every day until Mr. Schmitz is returned to the service of the Carrier.

(3) Pay Mr. Schmitz any amount he incurred for medical or surgical expenses for himself or his dependents to the extent such payments could have been paid by Travelers Insurance Company under Group Policy No. GA-23000 and, in the event of the death of Mr. Schmitz, pay his estate the amount of life insurance provided for under said policy. In addition, reimburse him for premium payments he may have made in the purchase of suitable health, welfare and life insurance."

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.

On March 8, 1989, Claimant was working out of the Yard Office. As a part of his duties on that day, he was to drive a Carrier vehicle throughout the yard, checking on cars and verifying tracks. While driving the vehicle, a tire went flat. Claimant drove the truck back to the Yard Office, fully aware that the tire was flat. The tire was ruined.

On March 28, 1989, Claimant was charged as follows:

"Precise charges being that while you were employed as a clerk on Job 455 at Portland Terminal Railroad Company from 3:00 p.m. to 11:00 p.m. on Wednesday, March 8, 1989, you were allegedly insubordinate by your refusal to change a flat tire, as instructed by the General Yardmaster, on Company Truck #60, which you were operating in conjunction with your duties on Job 455. During this same tour of duty you also allegedly failed to perform your duties in a safe manner and allegedly endangered yourself and company property by driving this same vehicle, fully aware that it had a flat tire. By your operating this vehicle with knowledge of the defect, you allegedly failed to abide by rules requiring that defective equipment be put in safe condition or taken out of service and furthermore, your actions resulted in destruction of company property as the tire was damaged beyond repair. Additionally, you allegedly failed to enter required information in the Clerk's Log Book pertaining to your operation of this vehicle on March 8, 1989."

A Hearing into the matter was held on April 5, 1989. As a result of that Hearing, Claimant was found guilty as charged and dismissed from Carrier's service effective April 22, 1989. On September 12, 1989, the parties agreed to return Claimant to service. On October 1, 1989, Claimant was awarded a disability annuity. Claimant's lost wages between April 22, 1989, and September 12, 1989, are at issue before this Board.

The Board has reviewed the Hearing transcript, together with the other documents presented in the record. That review reveals that while Claimant was guilty as charged, there were sufficient mitigating circumstances so that a sixty-day suspension would have been warranted. This level of discipline would have been severe enough to get the attention of Claimant, as well as other employees, and make the point that further such action would not be tolerated. The discipline imposed is to be reduced to a sixty-calendar day suspension. Claimant is to be made whole for lost monies.

A W A R D

Claim sustained in accordance with the Findings.

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Award No. 28913
Docket No. CL-29084
91-3-90-3-61

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1991.