

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

(Brotherhood of Maintenance of Way Employes  
PARTIES TO DISPUTE: (  
(Union Pacific Railroad Company

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

(1) The dismissal of Section Foreman G. E. Turner because he was allegedly, '... observed under the influence of alcoholic beverages while operating a Company vehicle in the vicinity of the 10 Interstate at Garey Avenue in violation of General Rules A, B, D and G, as well as Safety Rules 607, 609, 4150 and 4156....' on June 27, 1990 at 5:35 A.M., was arbitrary, capricious, based on unproven charges and in violation of the Agreement (System File D-143/910096).

(2) The Claimant shall be reinstated to the Carrier's service with seniority and all other rights unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered, beginning November 30, 1990, as a result of his unjustified dismissal."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Following an Investigation, Claimant was dismissed from service for violating Rule G by operating a Carrier vehicle while under the influence of alcohol and failing to notify the Carrier of the incident. According to the record of the Investigation, the Carrier received a notice on June 28, 1990, which indicated the California Highway Patrol had impounded a company vehicle. A Carrier Special Agent looked into the matter and discovered the vehicle had been impounded in connection with Claimant's arrest for driving under the influence, with a suspended driver's license, and without proof of insurance. This information was communicated to Claimant's supervisor on July 12, 1990, whereupon a Hearing was scheduled. Claimant was removed from service pending the Hearing.

Initially, the Organization contends the Investigation was defective because it was not held within thirty days of the June 28 notice to the Carrier. We do not find this argument persuasive. Rule 48(a) requires Carrier to hold its Investigation within thirty calendar days "from the date of the occurrence to be investigated or from the date the Company has knowledge of the occurrence to be investigated." The June 28 notice merely informed the Carrier that the vehicle had been impounded. This gave no indication Claimant might be in violation of Carrier Rules. It was not until it was found that the vehicle was impounded because of Claimant's arrest, as well as the circumstances of that arrest, that Carrier had any reason to believe a Rule violation was in evidence. While other time limit arguments were raised by the Organization for the first time before this Board, and therefore cannot be considered, we must reject the argument advanced by the Organization during the handling of this dispute on the property.

With respect to the merits of the discipline, we find that there is substantial evidence to support Carrier's charge against Claimant. Claimant made no effort to refute any of the evidence submitted by the Carrier. A review of Claimant's prior disciplinary record shows he had been dismissed in 1987, and had been found guilty of engaging in an altercation only one month prior to the incident involved herein. In that case, Claimant waived his right to a Hearing and accepted alternate discipline in lieu of a sixty day suspension. We do not find anything in the record which would cause us to modify the Carrier's decision.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Devet, Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1992.