Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30430
Docket No. SG-30859
94-3-92-3-676

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Kansas City Southern Railway

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen:

(a) Claim of the Brotherhood that the Carrier violated the Signalmen's Agreement, particularly Rule 53, when on June 12, 1991, it removed Signalman L.D. Sanford from service pending results of investigation scheduled for July 9, 1991. On July 14, it dismissed Signalman L. D. Sanford from service on the basis of unfounded charges resulting from investigation held July 9, 1991.

(b) Carrier should now return Mr. Sanford to service, all rights restored, payment for all time lost as required under Rule 53, of the Signalmen's Agreement and reimbursement of all out of pocket expenses incurred resulting from the July 9, 1991 investigation."

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.

On or about February 26, 1991, Claimant was arrested while driving a Company vehicle in Ascension Parish, Louisiana, and charged with Improper Lane Usage and Driving While Intoxicated. Claimant pled guilty to both charges, paid a fine and had his license suspended for 90 days. Claimant did not notify Carrier of his arrest and subsequent plea. Moreover, during the 90 days his license was suspended, he continued to operate the Company vehicle to which he had been assigned.

Carrier became aware of Claimant's arrest on or about June 11, 1991. It then requested a Department of Motor Vehicles report on Claimant to confirm the incident. On June 12, 1991, Claimant was issued a Notice of Investigation. Following an Investigation on July 9, 1991, Claimant was dismissed from Carrier's service.

The Organization argued that Claimant's plea of guilty to the charge of Driving While Intoxicated stemmed from his desire to shorten the time he would be without a license, and from his concern that an extended Court defense would take him away from his job. In light of the fact that this is Claimant's second "Rule G" violation, that argument is not persuasive. Claimant was reinstated on a leniency basis following a "Rule G" violation in February 1988. Accordingly, he was on notice that his conduct must, henceforth, be beyond reproach, particularly with respect to substance abuse. Accordingly, one would reasonably assume that, had he not been guilty as charged, he would have taken great pains to establish his innocence.

In addition, Claimant admitted to driving a Company vehicle without a valid driver's license over a period exceeding one month. That misconduct in itself is, in these circumstances, indefensible. In light of the foregoing, the Board does not find that Carrier's assessment of the ultimate penalty of dismissal was either unreasonable or excessive.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of August 1994.