

Corrected

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30490
Docket No. SG-30793
94-3-92-3-567

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
(
(CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company)

STATEMENT OF CLAIM: "Claim of the General Committee
of the Brotherhood of Railroad
Signalmen on behalf of C. D.
Brown that:

- (a) Carrier violated the parties' Schedule Agreement particularly the provisions of Discipline Rule 55 when Claimant was removed from service February 16, 1991, pending investigation and dismissed from service on or about June 21, 1991, following investigation held April 12 and June 14, 1991.
- (b) As a consequence of such action, Carrier should be required to return Claimant C. D. Brown, ID 625452, to service and make him whole for all wages and benefits lost including all seniority rights unimpaired."

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.

This case involves appeal of two different but related charges, combined by the Parties for the sake of efficiency. The first charge -- unauthorized use of and damage to a Carrier vehicle -- stemmed from Claimant's involvement in an accident on February 15, 1991. On that date, at approximately 10:00 P.M., the Supervisor of Signals was informed that Carrier vehicle No. 043115, assigned to Claimant, had been discovered wrecked and abandoned on State Route 80, near Martin, Kentucky. The Supervisor of Signals reported the incident to the Floyd County Sheriff's Department. The Sheriff's Department informed him that the driver of the vehicle had been apprehended, transported to the Martin, Kentucky hospital, treated for exposure, and Charged with Driving Under the Influence of an Intoxicating Beverage and Leaving the Scene of an Accident. Claimant was removed from service pending an Investigation.

The second charge -- failure to comply with Safety Rule 155 between November 5 and November 21, 1990 -- was a product of the first incident. In the process of investigating the accident involving Claimant and vehicle No. 043115, the Supervisor of Signals discovered that Claimant had been arrested and charged with Driving Under the Influence of an intoxicating beverage on August 24, 1990. On October 23, 1990 Claimant entered a plea of guilty, paid a fine of \$417.50, agreed to rehabilitation counselling and had his driver's license suspended for thirty days. On November 5, 1990, Claimant was awarded the position of Independent Signal Maintainer at Paintsville, Kentucky, and was assigned Carrier vehicle No. 043115. Claimant accepted that position without informing the Carrier that he did not, at the time, have a valid driver's license.

Investigations with respect to each charge were scheduled for March 14, 1991, but were postponed pending the resolution of Claimant's civil hearing. Both hearings were ultimately held on June 14, 1991, at 10:00 A.M. and 1:00 P.M., respectively. Claimant was subsequently notified by Carrier on June 21, 1991, that he had been found guilty of the first charge and was dismissed from service. By letter of July 2, 1991, Claimant was also notified that he had been found guilty of the second charge and was dismissed from service.

It is the position of the Organization that Claimant's dismissal constitutes excessive and arbitrary discipline in light of his previously unblemished record. Moreover, it points out that the Board has previously held that discipline should be progressive, particularly in the case of a long-term employee with a good record of service (See, Second Division Award 8157, Third Division Award 13128, and Special Board of Adjustment No. 1003, Award 24). Finally, the Organization directs the Board's attention to Claimant's closing statement at the end of the second investigation -- that he would "do anything to make amends with this company for a second chance."

A careful reading of the transcript of the Hearings indicates that weather conditions probably forced Claimant to abandon his vehicle following the accident. Nevertheless, the remaining proven charges are sufficiently serious to support Carrier's assessment of the ultimate penalty of dismissal. Notwithstanding Claimant's desire to "make amends" it is not within the Board's prerogative to grant him a "leniency" reinstatement. That is the sole prerogative of Carrier. (See, Public Law Board No. 2096, Award 11)

AWARD

Claim denied.

ORDER

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 13th day of September 1994.