

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31022
Docket No. MS-30681
95-3-92-3-474

The Third Division consisted of the regular members when award was rendered.

PARTIES TO DISPUTE: (Lonnie K. Caudill
(
(CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company)

STATEMENT OF CLAIM:

"(A) Claim on behalf of Lonnie K. Caudill that carrier (CSX TRANSPORTATION), violated agreement particularly rule #55, when I was dismissed from service on March 29, 1991.

(B) Carrier (CSX TRANSPORTATION), should now be required to return Lonnie K. Caudill to service and make him whole for all wages and benefits, including all seniority rights."

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 were given due notice of hearing thereon.

Section 3, First (i) of the Railway Labor Act and Circular No. 1 of this Board both require that all disputes to be considered by any Division of the Board must be handled in accordance with the provisions of the Agreement.

The Carrier maintains the claim is procedurally defective and should be dismissed because of the Petitioner's failure to comply with Rule 59(c). That Rule provides that disputes must be filed with the Board within 9 months of the decision by the highest designated officer of the Carrier.

The decision of the Carrier's highest designated officer was rendered on August 1, 1991. The Board finds that Claimant's May 18, 1992 Notice of Intent was not submitted to the Board within 9 months of the Carrier's declination, and is thus barred from consideration pursuant to Rule 59(c).

Even if we could reach the merits, the result would be the same. The Board reviewed the record as established on the property. Substantial evidence was developed at Claimant's Investigation that he was guilty as charged of the unauthorized use of a Carrier vehicle at approximately 1:00 AM on Friday, March 29, 1991.

Claimant was authorized to drive Carrier's vehicle for use in Carrier's service. He was not authorized to drive Carrier's vehicle when not engaged in Carrier's service. When an employee is entrusted with the privilege of operating an assigned Carrier vehicle (to and from home) he is expected to do so in a reasonable and responsible manner. In prior Awards on this property involving similar disputes the Board has held that unauthorized use of an assigned Carrier vehicle warranted dismissal from service (Awards 934 and 947, Public Law Board No. 3561).

AWARD

Claim dismissed.

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 26th day of July 1995.