

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31842
Docket No. MW-32233
96-3-95-3-46**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Kansas City Southern Railway Company (former
(SouthRail Corporation)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Messrs. B. W. Green and L. Y. McDonald for alleged violation of Midsouth Rail Safety and General Conduct Rules C and GR-5 was excessive and an abuse of the Carrier's discretion.

(2) As a consequence of the violation referred to in Part (1) above, the Claimants shall be reinstated to service with a measure of discipline more commensurate with the actual offense."

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.

The facts of this case are not in dispute. On the afternoon of January 3, 1994, Claimant McDonald was operating a Carrier truck to inspect track between Meridian and Artesia, Mississippi. Claimant Green was a passenger in the truck assigned to help Claimant McDonald. Claimants had a .22 rifle in the truck with them. Periodically they stopped to shoot at crows. When they reached approximately Milepost 146, the rifle discharged in the cab of the truck, wounding Claimant Green in the leg. Claimants were removed from service pending an Investigation. Following the investigatory Hearing both were dismissed from Carrier's service.

Since the facts of this case are not dispute, the only question before the Board is whether the discipline meted out was excessive and an abuse of Carrier's discretion. The Organization maintains that the injury sustained by Claimant Green was nothing more than the result of an accident. Further, both Claimants were well-mannered and cooperative during the initial Investigation and Hearing. Finally, the Organization points out that this was the first offense of employees with long years of service. The Carrier contends that possession of an unauthorized firearm, especially a loaded firearm, on Carrier property is contrary to Carrier Rules and warrants dismissal.

A long, unblemished discipline record may well serve as an argument against harsh penalty in cases of an employee's failure to protect his/her position (Third Division Award 21087) misstatement concerning an injury (Third Division Award 27084) or commission of other relatively minor Rule violations. Carrying a loaded firearm on Carrier property without authorization, however, does not fall into those categories. See, for example Third Division Awards 20199, 26250, and 25016. It is mere happenstance that the discharged bullet was not fatal to one of the Claimants. Under the circumstances, the Carrier's assessment of discipline is neither inappropriate nor excessive.

AWARD

Claim denied.

Form 1
Page 3

Award No. 31842
Docket No. MW-32233
96-3-95-3-46

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 December 1996.