

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33919
Docket No. MW-34362
00-3-97-3-981**

The Third Division consisted of the regular members and in addition Referee Sandra Gilbert Pike when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Mr. B. D. Brown for alleged violation of Safety Rule 60.2, Paragraph 3 and unauthorized tampering of safety device air horn on September 11, 1996, was arbitrary, capricious and excessive (System Docket MW-4487-D).**
- (2) The Claimant shall be reinstated to 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.”**

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.

Claimant, B. D. Brown held a Trackman Operator position in Rail Gang 110 with headquarters at Rutherford, Pennsylvania. At approximately 8:30 A.M. on September 11, 1996, Claimant opened the rear door of the transport bus and sounded the watchman's air horn twice through the bus. The noise of the air horn caused one co-worker to be taken to the hospital for traumatic hearing loss and three others to suffer short term injury.

Claimant was removed from service and sent a Form G-250 Notice of Hearing dated September 16, 1996, Claimant was instructed to appear for Hearing in connection with charges of:

- “1. Violation of Safety Rule 60.2, Para. 3, which states, ‘While on duty, do not take part in scuffling, practical jokes or horseplay.’ When on September 11, 1996 at approximately 10:15 AM you sounded an air horn through the rear door of the bus, causing possible injury to ears of four employees, one of which was taken to the emergency room for treatment.
2. Unauthorized tampering of a safety device (air horn) when on September 11, 1996 at approximately 10:15 AM you sounded an air horn through the rear door of the bus, causing possible injury to ears of four employees, one of which was taken to the emergency room for treatment.
3. Endangering the welfare of fellow employees when on September 11, 1996 at approximately 10:15 A.M. you sounded an air horn through the rear door of the bus, causing possible injury to ears of four employees, one of which was taken to the emergency room for treatment.”

After the Hearing which was held on September 26, 1996, Claimant was notified by Form G-32 Notice of Discipline dated October 7, 1996, that he had been found guilty and that the discipline of dismissal was assessed.

Claimant's dismissal was appealed on the property in accordance with the terms of the controlling Agreement. The parties being unable to resolve the issues, this matter comes before the Board.

The Organization argues that Claimant did not receive a fair and impartial Hearing because (1) the transcript provided to Claimant's Representative had various corrections marked on it and Carrier failed to supply Claimant's representative with a corrected copy of the transcript; (2) written statements obtained from employees, which had not been furnished to the Claimant or his Representative, were made part of the evidence in the case; and (3) that Hearing Officer Packosky read the Carrier's version of Claimant's record into the record. In addition, the Organization argued that Claimant should not have been dismissed in light of his years of service, a lack of progressive discipline, and his repentant attitude.

Claimant's representatives received a copy of the transcript. Second Division Award 12971 held that failure or refusal to furnish a list of witnesses and documents to be used at the Investigation, prior thereto, does not contravene Claimant's Agreement rights. See also: Third Division Awards 14187, 13670. In addition, this Award quoted Third Division Award 16308, which held that:

"Numerous awards of this Board had held that written statements of witnesses not present at an investigation are admissible in the absence of contractual prohibition. Awards 10596, 9624, 9311, 8504, and others."

After careful consideration of all the evidence, the Board finds that the record does not contain compelling evidence that Claimant's Hearing was unfair.

Regarding the merits of the case, Claimant confessed to blowing the air horn as a "little gag," stating that he did not know what had gotten into him and that he did not intend to harm anyone. Unfortunately this "little gag" committed without thought of the possible consequences of the action is serious misconduct which resulted in injury to other employees. Third Division Award 28484 held:

"Where, as here, there is an admission of guilt, there is no need for further proof Where, as here, there is no mitigation of the admitted guilt, this Board is without power to reverse the discipline as assessed by the Carrier. The precedent in this regard is so overwhelming as to preclude the necessity of numerous citations. Third Division Awards 22840, 24591, 24993, and 25164 are but a few of the plethora of Awards on this subject."

We find no justification for the Board to interfere with the Carrier's decision of dismissal. The claim is denied.

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 24th day of January, 2000.