

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19721
Docket Number SG-19880

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(George P. Baker, Richard C. Bond, Jervis Langdon, Jr.,
(and Willard Wirtz, Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former New York Central Railroad Company (Buffalo and East):

On behalf of Signal Maintainer Test E. J. Haller that discipline Carrier assessed against him (dismissal) for alleged rule violations on April 5, 1971) was excessive and should be rescinded.

OPINION OF BOARD: On April 21, 1971, following formal hearing conducted on April 13, 1971, the claimant was dismissed by Carrier for violating Rule G, using intoxicants while subject to duty, and Rule 3335, obeying motor vehicle laws.

The facts brought out at the hearing showed that, after completing his assignment on April 5, 1971, and while driving a company leased vehicle with the Carrier's consent, the claimant collided with a passenger car at about 5 PM. Subsequently, claimant was arrested for driving while intoxicated and for resisting arrest. Two hours after the collision claimant registered .21% on an alcohol breathalyzer test which was above the .15% that establishes intoxication.

Petitioner concedes the claimant's guilt of the rule violations, but contends that a part of the appeal procedure was not handled correctly and that the discipline of permanent dismissal is excessive.

The procedural matter concerns the handling of the Organization's initial appeal. The appeal, though addressed to Supervisor Moody, was answered by Division Engineer Grimes. This was not in accord with the established procedures, according to Petitioner, in that Supervisor Moody should have answered the appeal. Both of these officials were involved to some extent in claimant's case. Supervisor Moody removed claimant from service pending investigation and appeared as a witness at his hearing; Division Engineer Grimes issued the April 21 notice of dismissal to claimant. In these circumstances consideration of the appeal by either of the officials afforded some basis of argument of possible prejudice to claimant; however, after the initial appeal, the claim was appealed

to two higher levels and discussed in conference at the highest level of appeal. Thus, if any irregularity actually occurred here, it was de minimus and caused no material prejudice to claimant's case. Accordingly, we conclude that claimant's procedural rights were fairly observed in accordance with the Agreement.

With respect to the question of excessive discipline, Petitioner urges the Board to consider claimant's twenty years of service and his commendable record prior to the instant situation. Also, attention has been called to Awards in which this Board reduced the discipline of permanent dismissal where Rule G violations had occurred while employees were off duty. However, the employees in those Awards, unlike the claimant here, did not have any company property in their possession and care when the violation occurred and, hence, those Awards are not appropos to this case. Here the claimant's duty to protect the company leased vehicle which had been placed in his possession and care, and avoid involving Carrier in liability for damages by reason of its improper use, was essentially the same during either on-duty or off-duty use of the vehicle. So, while we have considered claimant's length of service and commendable record prior to this incident, as well as the off-duty aspect of the case, we believe the dominant consideration is that claimant imprudently used intoxicants while driving a company vehicle and thereby caused a collision with a privately owned automobile. Accordingly, we cannot say that Carrier's discipline was so unreasonable or arbitrary as to amount to an abuse of discretion. We shall deny the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1973.