

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21990  
Docket Number CL-21505

Robert M. O'Brien, Referee

(Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
PARTIES TO DISPUTE: (  
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,  
GL-8020, that:

1. Carrier acted arbitrarily and capriciously and in a discriminatory manner, violating Rule 15 and other rules of the Agreement, when on November 12, 1974, it dismissed from service A. O. Baynard, Seacoast Transportation Company, Tampa, Florida.

2. As a consequence, Carrier shall:

- (a) Clear service record of A. O. Baynard of the charge and any reference in connection therewith.
- (b) Promptly restore A. O. Baynard to duty with seniority, vacation and other rights unimpaired.
- (c) Pay A. O. Baynard the amount of wages he would have earned absent the violative act, less outside earnings.
- (d) Pay A. O. Baynard any amount he incurred for medical or surgical expenses for himself or dependents to the extent that such payments would have been paid by Travelers Insurance Company under Group Policy No. GA-23000 and, in the event of death of A. O. Baynard, pay his estate the amount of life insurance provided for under said policy. In addition, reimburse him for premium payments he may have made in the purchase of substitute health, welfare and life insurance.
- (e) Pay A. O. Baynard interest at the statutory rate for the State of Florida for any amounts due under (c) hereof.

OPINION OF BOARD: Following a hearing held on November 5, 1974, Claimant was dismissed from the Company's service for his alleged violation of Rule 33 of the Seacoast Operating Manual. Rule 33 provides that employees shall not be absent from duty without prior permission. It is the Employees' contention herein that the Company acted in an arbitrary, capricious and discriminatory manner when they dismissed Claimant from service effective November 12, 1974. They therefore request that he be restored to service with all rights unimpaired, and be compensated for all wages lost as a result of his unwarranted dismissal.

The Company avers, inter alia, that they are not a carrier within the meaning of Section 1, First, of the Railway Labor Act, as amended, and that, accordingly, this Board lacks jurisdiction to adjudicate the dispute submitted by the Employees. This Board is not persuaded from the record before us that the Seacoast Transportation Company is not a carrier within the meaning of the Railway Labor Act. And in any event, it is the National Mediation Board, not this tribunal, that must make such a determination. The record reflects that Petitioner has been certified as the duly designated and authorized representative for purposes of the Railway Labor Act of the craft or class of "Truck Operators & Helpers" (NMB Certification R-4123). It seems reasonable to conclude that Railway Labor Act coverage is precedent to such a certification. This sufficiently convinces this Board that the National Mediation Board has determined that the Company is a carrier within the meaning of Section 1, First.

This Board is unable to find from a thorough reading of the transcript of the November 5, 1974 hearing that Claimant was deprived of a fair and impartial hearing as asserted by the Employees. While the District Supervisor did in fact conduct the investigation and render the discipline, this was consistent with the requirements of Rule 15 (e).

Rule 33 of the Seacoast Operating Manual states, in clear and unambiguous language, that employees must not absent themselves from duty without prior permission. The facts adduced at the November 5, 1974 hearing clearly evince that Claimant had absented himself from duty subsequent to June 3, 1974 without permission. While he claimed that he had sustained a nonwork related injury which prevented him from returning to service, he failed to submit adequate medical evidence to support this alleged accident as he was requested to do.

Although the charge preferred against Claimant has been proven by substantive evidence of probative value, nonetheless Claimant's discharge, we hold, was clearly excessive. Accordingly, we order Claimant restored to service with his seniority unimpaired, provided he reports to work with the Company within 60 days of the date of this Award. However, Claimant shall not be entitled to any compensation or other benefits for the time he has been out of service.

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 disposed of per the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1978.