

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22026
Docket Number CL-21944

Dana E. Eischen, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Consolidated Rail Corporation
((Former Penn Central Transportation Company)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood GL-8291,
that:

- (a) The dismissal in all capacities of W. J. Gump following a trial held on June 17, 1975, was arbitrary, capricious and unjust.
- (b) Mr. W. J. Gump shall be restored to the service of the Carrier with Seniority and all other rights unimpaired and compensated for all time lost from his position as a Block Operator of the Penn Central Transportation Company, beginning June 10, 1975 and continuing until he is restored to service.

OPINION OF BOARD: This case involves the dismissal from service of Mr. W. J. Gump following an incident on June 9, 1975. By letter dated June 10, 1975 Claimant was notified to attend a trial on June 17, 1975 on the following charge:

"Violation of second paragraph, Rule E of the Penn Central Rules for Conducting Transportation (effective 4-7-72), when you threatened Operator G. E. Felabom, by pointing a hand gun at him at Warsaw, Indiana at approximately 6:45 A.M., CST, June 3, 1975, while you were the Operator on duty at Warsaw, Indiana."

Review of the transcript establishes beyond reasonable doubt that Claimant pulled a gun on a fellow employee during an argument over smoking in the office. The record shows that Claimant is exceptionally sensitive to tobacco smoke and has frequently confronted other employees to insist that they not smoke in his presence. It also is established by Claimant's own testimony that he had a long-standing grudge going back some 25 years against Mr. Felabom. When Felabom refused to put out his pipe at Claimant's demand, Claimant stated in words or substance, "I'll put it out for you." He then pulled out his pistol and pointed it at Felabom who immediately called the police. Before the police arrived, Claimant pulled the pipe out of Felabom's mouth and threw it out the window. The police arrived, disarmed Claimant, removed the bullets from the gun and returned it to Mr. Gump. The record shows that Claimant did have a valid pistol permit to have the weapon in his possession.

The foregoing facts are fully established on the record. There is no meaningful evidence to support Claimant's assertion that he was acting in self-defense and out of imminent fear for his life. Notwithstanding whether his objections to tobacco smoke were reasonable or the reasons for the previous "bad blood" between himself and Mr. Felabom, there is no justification for his conduct. No employee can be expected to tolerate such deadly threatening conduct at the workplace by one employee against another. The charge against Claimant is fully supported by the evidence, his misconduct warrants discipline, and the penalty of dismissal shall not be disturbed by us. The claim is denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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

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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 28th day of April 1978.