

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22371
Docket Number MW-22478

George S. Roukis, Referee

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees
(
St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Trackman P. R. Schofield was without just or sufficient cause and it was extremely disproportionate to the offense with which charged (System File B-1199).

(2) Claimant Schofield shall be returned to service and allowed all of the benefits prescribed within Agreement Rule 91(b) (6)."

OPINION OF BOARD:

Claimant was charged with violating Maintenance of Way and Structures Rules 652 and 910 which are referenced hereinafter:

Rule 652 - "Employees who are careless of the safety of themselves or others will not be continued in the service."

Rule 910 - "Vehicles will be used only for Company business. . . . Unauthorized persons must not be carried in vehicles."

An investigative hearing was held on May 27, 1977 wherein he was found guilty of the specifications and subsequently dismissed from service, effective, April 23, 1977.

The Organization argues on appeal that Claimant was terminated without just or sufficient cause and in effect suffered a penalty that was incommensurate to the assertive violations.

Accordingly, consistent with our appellate responsibility, we have carefully examined the investigative record to determine whether Claimant was afforded a fair and impartial hearing. We find nothing in the record, after this review, that suggests bias or partiality.

Claimant had ample opportunity to present an effective affirmative defense.

In the instant case, Claimant had requested permission from the Assistant Roadmaster to drive the bus assigned to the System Gang from Stoutland to Sleeper, Missouri. The distance was seven (7) miles on a road which paralleled the railroad tracks. It was an uncomplicated short distance route.

Contrary to the explicit prohibitions set forth in Rules 652 and 910, (supra) Claimant transported two (2) unauthorized passengers, who were in the vehicle at the time of the accident. One of them suffered a small cut over the right eye and a small bruise on the right side of the nose. The vehicle was severely damaged.

Claimant, who also sustained minor injuries, was taken to the hospital for injury diagnosis and treatment. A urine analysis revealed positive drug findings.

While Claimant is not being charged for drug or narcotic usage, the fact pattern configuration of his actions and condition are dramatically apposite Carrier's safety requirements. The promulgation of detailed and clearly stated safety rules and regulations like Rules 652 and 910 are specifically designed to prevent the kind of the problems that we are now considering.

It would ill serve the public interest or the integrity of these rules, if we disregard their application in the face of compelling confirmatory evidence.

Claimant picked up two (2) unauthorized persons, which by itself is a serious rule violation. It was further compounded by the accident and urine analysis results. We find no justification, given these findings, to modify or set aside Carrier's dismissal determination. We will thus 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: AW. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1979.