

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22615
Docket Number MW-22736

Paul C. Carter, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employes
{ Chicago, Rock Island and Pacific Railroad Company
{ (William M. Gibbons, Trustee)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of B&B employee Richard Lewis on September 20, 1977 was without just and sufficient cause and was exceedingly disproportionate to the charge of violating Rule 'K' (System File 11-D-744/L-126-1650).

(2) The claimant shall be reinstated to his former position with seniority rights unimpaired and he shall be granted all other benefits and privileges described in Rule 19."

OPINION OF BOARD: Following charge and investigation under the provisions of Rule 17 of the Agreement, claimant, a crane operator for the Carrier, was dismissed from service effective September 21, 1977, because:

"....of your responsibility in connection with company truck 73091 driven by you being involved in an accident on July 13, 1977 in Princeton Township, Illinois in violation of Rule K of the Rules and Regulations for Maintenance of Way and Structures, as developed in the hearing held in the Division Engineer's office, Silvis, Illinois at 10:00 A.M. September 13, 1977."

A copy of the transcript of the investigation conducted on September 13, 1977, has been made a part of the record.

Carrier's Rule K of the Rules and Regulations for Maintenance of Way and Structures, as referred to in the letter of dismissal of September 21, 1977, provides in part:

"Property of the railroad, including freight and articles of value found in or on cars, or on the right of way, must be cared for and properly reported, and not in any way disposed of, or removed from Company premises or right of way without first securing proper authority."

A review of the transcript of the investigation and the handling of the dispute on the property shows that none of claimant's substantive procedural rights was violated.

The record shows that on July 12, 1977, at about 7:30 P.M., claimant departed Ottawa, Illinois, driving a Company truck, without having obtained authority from the Carrier, allegedly in a search for sheet piling. He proceeded to Bureau, Illinois, where he met a Bridge Mechanic for the Carrier. Claimant and the Bridge Mechanic continued in the Carrier's vehicle to various locations and made several stops. About 12:10 A.M., July 13, 1977, the vehicle operated by the claimant was involved in a serious accident, striking an automobile head-on. The driver of the automobile was fatally injured, as was the Bridge Mechanic riding with the claimant, and the claimant was seriously injured. In the investigation claimant admitted that the entire trip in the Company vehicle was without authorization of the foreman or any officer of the Carrier.

Based on the facts as developed in the investigation, the Board finds that Carrier's actions in dismissing claimant from the service was not arbitrary, capricious or in bad faith. The claim will be 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

That the Agreement was not violated.

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Docket Number MW-22736

Page 3

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 9th day of November 1979.