

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23007
Docket Number MW-23137

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(St. Louis Southwestern Railway Company

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

(1) The dismissal of Welder Helper V. R. Davis, Jr. for alleged violation of Rules 'M' and 'M 243' was without just and sufficient cause and on the basis of unproven charges (System File MW-79-3-CB).

(2) Claimant V. R. Davis, Jr. shall be returned to service with pay for all time lost and with seniority, vacation and all other rights unimpaired."

OPINION OF BOARD: Claimant, who had been employed by the Carrier approximately one year and five months, was working as a welder helper. On November 22, 1978, he was driving a truck that was involved in a collision with a Company bus. He was dismissed from service on that date. He requested a hearing and on November 27, 1978, the Division Engineer wrote him:

"Reference to your undated letter received in this office November 27, 1978, requesting a fair and impartial hearing account of your dismissal from the employment of the St. Louis Southwestern Railway Company November 22, 1978.

"For your violations of that part of the Rules and Regulations for the government of Maintenance of Way and Engineering Department Employees of the St. Louis Southwestern Railway Company as quoted below, you were dismissed from the service of the St. Louis Southwestern Railway Company.

"Rule M. 'Carelessness by employees will not be condoned and they must exercise care to avoid injury to themselves or others' ...

"Rule H243. 'No motor vehicle is to be set in motion until it is known that the way is clear. Care must be exercised in parking and driving, either on or off the right-of-way, to avoid damage to equipment or injury to occupants' ...

"At your request, you are granted a fair and impartial hearing to be held in the Division Engineer's Office, Pine Bluff, Arkansas at 10:00 A.M. Thursday, November 30, 1978. You may have representative and witness of your choice to assist you at the hearing."

The hearing was conducted as scheduled, and on December 6, 1978, claimant's dismissal was affirmed. A copy of the transcript of the hearing has been made a part of the record.

The Board has carefully reviewed the transcript of the hearing and finds that none of claimant's substantive procedural rights was violated. While there were some conflicts in the testimony given at the hearing, it is not the function of this Board to weigh evidence, attempt to resolve conflicts therein, or to pass upon the credibility of witnesses. Such functions are reserved to the hearing officer.

Based upon our careful consideration of the entire record, the Board concludes that discipline was warranted; however, permanent dismissal was excessive. We will award that claimant be restored to service with seniority and other rights unimpaired, but without pay for time lost while out of the 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 discipline imposed was excessive.

A W A R D

Claim sustained in accordance with Opinion and Findings.

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By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 17th day of October 1980.