

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23349
Docket Number MW-23377

Paul C. Carter, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

(1) The dismissal of Trackman Andrew Liddell was without just and sufficient cause and wholly disproportionate to the offense with which charged (System File C #61/D-2298-1).

(2) Trackman Andrew Liddell shall be returned to service with seniority and all other rights unimpaired."

OPINION OF BOARD: Claimant had been in Carrier's service as trackman about ten years. On March 19, 1979, he was dismissed from the service for carrying a gun while on duty and on Company property on March 16, 1979.

The claimant requested a hearing in accordance with the provisions of the applicable Agreement. The hearing was conducted on March 28, 1979, following which the dispute was handled in the usual manner on the property, and, failing of settlement, was referred to this Board.

A copy of the transcript of the hearing conducted on March 28, 1979, has been made a part of the record. We have carefully reviewed the transcript of the hearing and find that none of claimant's substantive procedural rights was violated. Claimant was present throughout the hearing and was represented. The hearing was conducted in a fair and impartial manner.

Rules 700 and 708 of Carrier's Operating Rules for Employees in The Maintenance of Way and Structures and the Signal and Communication Department read:

Rule 700: "Employees will not be retained in the service who are careless of the safety of themselves or others, disloyal, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner that the railroad will not be subjected to criticism and loss of good will, or who do not meet their personal obligations."

Rule 708: "Employees are prohibited from having loaded or unloaded firearms in their possession while on duty except those employees authorized to do so in the performance of their duties or those given special permission by the Superintendent."

In the hearing conducted on March 28, 1979, there was substantial evidence that claimant did have a firearm in his possession while on duty on March 16, 1979. Four employees so testified. Claimant did not come within the exceptions set out in Rule 708.

This Board has issued a number of awards upholding the dismissal of employees for being in the possession of firearms while on Company premises. See Third Division Awards 20199 and 20675; Second Division Awards 6938 and 7792. There is no proper basis for the Board to interfere with the discipline imposed by the Carrier in our present case.

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:


Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1981.