

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23836
Docket Number MW-23706

A. Robert Lowry, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Terminal Railroad Association of St. Louis

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

(1) The dismissal of Trackman Cornelius Goss for alleged conduct 'unbecoming to an employe of the Terminal Railroad Association of St. Louis' was without just and sufficient cause and on the basis of unproven charges (System File 1979-38).

(2) Trackman Cornelius Goss shall be reinstated with seniority and all other rights unimpaired and be compensated for all wage loss suffered."

OPINION OF BOARD: Mr. Cornelius Goss, the Claimant, was employed as a Track Laborer by the Carrier with a seniority date of July 20, 1977. The Carrier became aware, on July 30, 1979, of the Indictment, Plea and Sentencing in the case of State of Illinois vs Cornelius Goss, that Claimant had been indicted by the Grand Jury in the Circuit Court of the 12th Judicial Circuit, St. Clair County, Illinois for the offense of Murder of Charles Lewis on January 13, 1979. As a result of some plea bargaining in exchange for Claimant's plea of guilty to Involuntary Manslaughter, Claimant was sentenced on July 6, 1979 to 30 months' probation, conditions of which were that Claimant was to refrain from alcohol and not to carry a weapon.

On August 2, 1979, Carrier charged Claimant as follows:

"I have just come into possession of Certified Copies of the Bill of Indictment, Plea and Sentencing in the matter of the State of Illinois vs Cornelius Goss 79-CF-71, dated July 25, 1979, wherein you pleaded guilty to the crime of involuntary Manslaughter on May 29, 1979, in connection with the death of one Charles Lewis by gun shot on January 13, 1979."

"A hearing to determine your responsibility, if any, in connection with your conduct being unbecoming to an employee of the Terminal Railroad Association of St. Louis as a result of the aforementioned matter will be held at 10:00 A.M., Thursday, August 9, 1979, in the Conference Room in building located at #137 East Bremen Ave., St. Louis, Mo."

"Arrange to be present. You are entitled to representation and witnesses in accordance with Rule #24 of the current Agreement between the Terminal Railroad and the Brotherhood of Maintenance of Way Employees."

The hearing was held on August 17, 1979, after one postponement. Copy of the transcript was made a part of the record. A careful study of the transcript reveals Claimant was given a fair and impartial hearing. He was represented by the General Chairman of his Organization, accorded the right to produce witnesses at the hearing but he chose not to, and was accorded the right to cross examine Carrier's witnesses.

The Carrier on August 23, 1979, dismissed Claimant from its services.

A thorough study of the entire record including the transcript and the evidence developed in the hearing clearly shows Claimant pleaded guilty to a charge of Involuntary Manslaughter which incident had resulted in the death of another human being. The Carrier proved beyond any reasonable doubt that Claimant engaged in conduct unbecoming an employe, and, we find that Carrier was not arbitrary or unreasonable in finding Claimant guilty of the charges as serious as these. For these reasons this Board will not disturb the discipline assessed.

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 Employes involved in this dispute are respectively Carrier and Employes 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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of March 1982.

