

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24124
Docket Number MW-24205

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Seaboard Coast Line Railroad Company

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

(1) The dismissal of Trackman J. T. Luckey for alleged violation of Rule No. '18' was arbitrary and in violation of the Agreement (System File C-4(13)-JTL/12-39(80-18) H).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, while off duty and off Carrier's property, allegedly fatally wounded a man on February 17, 1979. Claimant continued to protect his assignment, however, until November 9, 1979. On this date he obtained permission from the Carrier to be absent from his assignment to appear in court. Subsequently Claimant pled guilty to the charge of voluntary manslaughter on November 14, 1979 and he was sentenced in the Superior Court of the County of Mecklenberg, North Carolina to six to ten years in prison with eligibility for parole in four years. The presiding judge recommended that Claimant be put on work release and that part of his earnings while on work release and/or parole be sent to the mother of the man Claimant killed to reimburse her (in the amount of \$1,203.00) for funeral expenses. A stipulation of Claimant's plea of voluntary manslaughter was that he serve a mandatory minimum sentence of four (4) months in prison.

On November 26, 1979 Carrier bulletined the Claimant's position on Section Force 5706 as a permanent position vacancy and on November 27, 1979 Carrier notified Claimant to attend a formal hearing on December 6, 1979 for the alleged contravention of Rule 18 of the Seaboard Coast Line Railroad Company's Safety Rules for Engineering and Maintenance of Way Employees. Rule 18 reads:

"Disloyalty, dishonesty, desertion, intemperance, immorality, vicious or uncivil conduct, insubordination, sleeping on duty, incompetence, making false statements, or concealing facts concerning matters under investigation, will subject the offender to dismissal."

An investigation was held on December 6, 1979 and the Claimant was absent although neither Claimant nor his representative requested a postponement prior to that date. On December 14, 1979 Claimant was informed by the Carrier that he had been found guilty as charged and that he was being dismissed from service.

A complete review of the facts of this case leads the Board to conclude that there is sufficient substantial evidence present to warrant the conclusion that Claimant was in violation of Rule 18 of Carrier's Safety Rules. As a procedural point, Organization argues that Claimant did not receive a fair hearing on December 6, 1979 because he was not present at the hearing. Aside from the facts, important enough in themselves in the mind of the Board, that neither Claimant nor Organization requested a postponement prior to the actual time of the hearing itself, nor was Claimant's representative able to give an alternative date for a hearing since it was not really clear how long Claimant was to remain in prison (only the minimal amount of time was known), the Board finds nothing improper per se, in a case of this type, in holding a hearing in absentia. The contravention of Carrier's Rule 18 was based on the fact of Claimant's conviction of a penal law, which had already occurred and which was on record, which the Claimant's personal presence at the hearing would not have changed one way or the other.

The Organization's contention that Claimant's position be ruled as a temporary vacancy rather than a permanent vacancy is also found to be without merit by the Board in this case. Rule 8, Section 1 of the Agreement between the parties makes it clear that positions vacated for more than thirty (30) days can be designated as permanent vacancies: and at the very least, from the record presented to this Board, Claimant was required to be absent from his position for a minimum of four (4) months.

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.

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

Chicago, Illinois, this 14th day of January 1983.