

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24310
Docket Number MW-24219

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 Bridgeman H. Smiley, Jr. for violation of Rule '18' was excessive and wholly disproportionate to such offense (System File C-4 (13)-HS/12-39(8-24) H).

(2) Bridgemen H. Smiley Jr. shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, Mr. H. Smiley, Jr. entered the service of the Carrier approximately 6 years prior to the incident under consideration. By letter dated February 19, 1980 Claimant received notice that he was charged with violation of Carrier General Rules 18 and 26. These Rules state in pertinent part, the following:

"Rule 18

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

"Rule 26

Unauthorized employees and others not having legitimate Company business to transact are prohibited from entering or loitering about railroad offices, stations, warehouses, yards, shops, equipment, trestles and other properties. Persons so observed must be reported to supervisor."

At approximately 4:05 P.M. on February 14, 1980 Claimant was allegedly observed by Carrier's Protection Officer on property taking gasoline from a Carrier storage tank. Claimant was putting this gasoline into his personal truck and in his truck was also a Carrier chain saw. Claimant admitted to the Protection Officer, confirmed by a statement which he wrote the same day, that he did have permission to borrow the chain saw for the week-end but that he did not have permission to take the gasoline. A hearing to determine Claimant's responsibility, if any, with respect to the violation of Rules 18 and 26 was held on February 22, 1980. As a result of this hearing Claimant was found guilty as charged and by letter dated February 29, 1980 was dismissed from service.

A review of the transcript of the hearing and other supporting materials presented to this Board leave little doubt of Claimant's culpability with respect to the theft of the gasoline on February 14, 1980 and his unauthorized presence on Carrier property on that same date. The testimony of Carrier's Protection Officer, Mr. J. D. H. Helms, is corroborated by Claimant's written statement and by his own testimony in hearing. Sufficient substantial evidence is present to warrant that Claimant is guilty as charged.

The only issue to be resolved, therefore, is whether Carrier's assessment of penalty was reasonable. The Organization here argues that leniency is in order not only because Claimant afterwards made restitution for the gasoline which was stolen, but also because Claimant readily admitted exercising poor judgment when he took the gasoline on February 14, 1980. Since prior Board Awards have sustained claims when it was deemed that the penalties exceeded the gravity of the offenses (Third Division 18016; 19037; 21984 inter alia) it could be argued in the instant case that the amount stolen was not, relatively speaking, great. This Board notes however, in examining the total record of the Claimant that this is not the first time that he was charged, found guilty, and assessed penalty for contravention of Rule 18 and/or for committing other types of dishonest acts. The instant incident forms but part of a pattern of behavior on the part of the Claimant to which discharge, as final step of the application of the principle of progressive discipline, is not excessive. This Board will not, therefore, disturb Carrier's determination in this matter.

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;

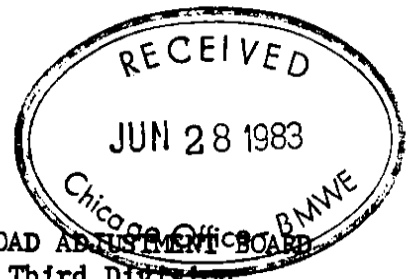
That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

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

Dated at Chicago, Illinois, this 14th day of April 1983.