

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24345
Docket Number MW-24218

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Seaboard Coast Line Railroad Company

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

(1) The dismissal of Cook J. A. Little for alleged violation of 'Rule 18' was capricious, arbitrary, without just and sufficient cause and on the basis of unproven charges (System File C-4(13)-JAL/12-39(80-22)H).

(2) Cook J. A. Little shall be reinstated with seniority and all other rights unimpaired, his record be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, Mr. J. A. Little, was employed by the Carrier approximately 10 years prior to the incident. By letter dated January 28, 1980 Claimant received notice from the Carrier to attend a formal investigation on February 6, 1980. He was charged with alleged violation of that part of Carrier General Rule 18 which reads, in pertinent part, that "... dishonesty ... immorality ... making false statements ... will subject the offender to dismissal". After postponement, the hearing was held on February 13, 1980. As a result of this hearing Claimant received notice, dated February 22, 1980 that he was dismissed from service.

A review of the transcript of the hearing and other supporting materials presented to this Board show that Claimant was absent from his assignment on January 21, 1980. The alleged reason for this absence was Claimant's appearance in court at the Richmond County Courthouse to resolve an issue related to his home having been allegedly robbed on January 18, 1980. A written statement to that effect was presented to the Carrier by the Claimant at about 6:30 PM on January 21, 1980. The basis for Carrier's charge against Claimant is that this statement does not represent a true version of the facts.

The transcript of the hearing and supporting documents, particularly the one dated January 22, 1980 from the office of the Sheriff of Richmond County, Rockingham, North Carolina show sufficient substantial evidence to be present to warrant the conclusion that Claimant is guilty as charged. And substantial evidence has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed. Co. vs. Labor Board 305 U.S. 197, 229). There is no record of a robbery having been reported prior to January 21, 1980 which would have necessitated an appearance in court by the Claimant on that day. Further, no one was found who could testify that Claimant had recovered stolen goods from the courthouse on that same January 21, 1980. Indeed, the Sheriff's officer whom Claimant testifies that he notified of the theft of his personal possessions on January 19, 1980 could not even remember having had discourse with the Claimant on that day, much less having filled out a written report which is custom. In the absence of any other supporting evidence,

therefore, this Board concludes that the Carrier has met the burden of proving the charge raised against the Claimant. Upon the total record before it, therefore, this Board finds no justification for disturbing discipline assessed by the Carrier. The Claimant received a fair hearing whereby substantial evidence established a violation of Rule 18 in pertinent part and the discipline assessed has not been shown to be arbitrary, unreasonable nor capricious.

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.

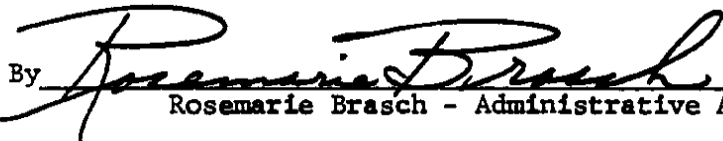
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of April 1983.

