

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24346
Docket Number MW-24229

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 H. L. Garland for 'attempting to remove gasoline from the automobile of Conductor T. F. McNamara' was unwarranted and wholly disproportionate to such charge (System File C-4(13)-HLB/12-39(80-21) H).

(2) Trackman H. L. Garland 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. L. Garland entered service of the Carrier approximately 3 years prior to the incident under consideration in this case. By letter dated January 14, 1980 Claimant was notified that he was charged with violation of Carrier General Rule 18. This Rule reads, in pertinent part, as follows:

"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."

At approximately 4:00 PM on January 4, 1980 Claimant was allegedly observed attempting to remove gas from the automobile of a fellow employe without this employe's knowledge. A hearing to determine Claimant's responsibility, if any, with respect to the violation of Rule 18 was held on January 22, 1980. As a result of this hearing Claimant was dismissed from service on January 31, 1980

The issue in this case is whether Claimant was, in fact, in contravention of Rule 18 for attempting to "steal" gas from a co-worker's car on January 4, 1980 in order to make it home in his own vehicle since he testified that he did not have money on his person to buy gas, or whether Claimant was caught in the act by Carrier in an attempt to "borrow" gas from a co-worker who was a friend. A review of the transcript reveals the following points. Both Claimant and conductor T. F. McNamara, from whose car the Claimant attempted to siphon gas, admitted that they were fairly close associates, that they had ridden to work together on many occasions, had drank beer together, that McNamara had loaned Claimant money in the past, and the same McNamara admitted that Claimant was, in his opinion, as honest as "the day is long". Further, McNamara admitted that he would have given Claimant permission to take gas from his car and/or would have loaned him money on this occasion to buy gas if Claimant had asked. This Board makes no judgment on the credibility of Claimant's testimony as this relates to a note and a watch as collateral which he claims was to have been left on McNamara's

windshield to inform him of Claimant's act ... or on the validity of the note which was subsequently found behind a rain downspout on a building near to where the act originally took place on Carrier property. Prior Awards clearly establish that this Board, in its appellate function, is not a trier of facts (See Third Division 9230, 9322, 10113, 21612 inter alia). This Board does note, however, that McNamara states in hearing that he "would have accepted" this explanation after the fact if it had been available to him and/or if he would have found the note in question.

It is the determination of this Board, therefore, that while Claimant may not have been in violation of Carrier Rule 18 he did, as the Organization itself put it, exercise extremely "poor judgment when he attempted to borrow gasoline from his friend" at the time and place under consideration. He also created, as conductor McNamara put it in hearing, an "embarrassing situation", to say the least.

Sufficient sanction for such poor judgment, in the mind of this Board, is the time off which Claimant has already lost because of this whole incident. This should not, however, disallow him one last chance to prove his worth to the Carrier since the Board also notes that Claimant's past record is clear of all malfeasance as this relates to Rule 18. The Claimant should be returned to service with seniority and other rights unimpaired but without back pay for time lost while out of service.

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.

That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

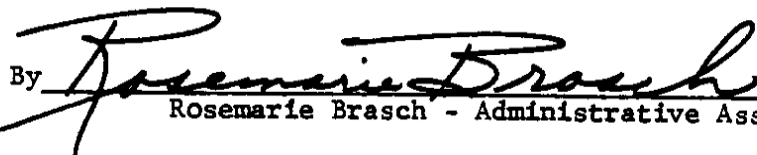
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By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By

A handwritten signature in cursive script, reading "Rosemarie Brasch", written over a horizontal line.

Rosemarie Brasch - Administrative Assistant

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