

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24362
Docket Number MW-24621

Paul C. Carter, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ The Washington Terminal Company

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

(1) The dismissal of Assistant Track Foreman S. A. Harrison for alleged violation of Rules 'N' and 'O' was without just and sufficient cause and unwarranted.

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Prior to his dismissal, claimant, with about 8-1/2 years of service, was employed as Assistant Track Foreman, with assigned hours 8:00 a.m. to 4:00 p.m. Under Rule 4-G-1(e) of the applicable agreement, he was entitled to twenty minutes in which to eat without deduction in pay.

On August 22, 1980, claimant obtained permission to absent himself from duty at 12:00 noon. On August 28, 1980, he was instructed to attend an investigation on September 17, 1980, on the charge:

- "1. Violation of The Washington Terminal Company General Rule 'N', that part which reads, '...falsifying reports...while on duty or while on Company property is prohibited.' When on Friday, August 22, 1980 falsified time card showing four (4) hours worked between 8:00 a.m., and 12:00 Noon.
- "2. Violation of The Washington Terminal Company General Rule 'O', that part which reads, 'No employe will be absent from duty without permission.' When on Friday August 22, 1980, you were observed leaving The Washington Terminal Company property at approximately 11:22 a.m.

The investigation was held as scheduled, following which claimant was notified on September 22, 1980, of his dismissal from service. A copy of the transcript of the investigation has been made a part of the record. We have reviewed the transcript of the investigation and find that the investigation was conducted in a fair and impartial manner. None of claimant's substantive procedural rights was violated.

Carrier's General Rules "N" and "O" read:

"N. Employees must be of good moral character and must conduct themselves at all times, whether on or off Company property, in such manner as not to bring discredit upon the Company.

Stealing, falsifying reports, being insubordinate, engaging in altercations, gambling, playing games, participating in any illegal, dishonest, or immoral activity, while on duty or while on Company property, is prohibited.

Participating in any unauthorized or unnecessary activity, while on duty or while on Company property, is prohibited.

Employees are prohibited from entering cars except in the performance of their duty. Loitering in cars is prohibited."

"O. No employee will be absent from duty, have a substitute perform his duties, or engage in other business without permission."

In the investigation it was developed by testimony of the Track Supervisor and claimant's foreman that claimant had permission to leave at noon. It was also developed, by testimony of an Investigator for the Carrier, that claimant was seen leaving the property, by climbing over a 10-foot fence, at about 11:20 or 11:22 a.m. Claimant had left the gang, saying that he was going to the bathroom about 11:13 or 11:15 a.m. He did not report back to his foreman and, as previously stated, was observed climbing over the 10-foot fence about 11:20 or 11:22 a.m. Claimant testified that when he was in the bathroom at 11:40 a.m. he decided to take his 20-minute lunch period, which would cover the period to 12:00 noon, however, he did not report back to the foreman. His time report for August 22, 1980, bearing his signature, was introduced in the investigation and showed work time 8:00 a.m. to 12:00 noon and 20 minutes for lunch from 12:00 noon to 12:20 p.m. Claimant denied leaving the property about 11:20 or 11:22 a.m., as testified by the Carrier's Investigator. He did not deny leaving the premises by climbing over the 10-foot fence, but did dispute the time of such occurrence. It is not the function of this Board to weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Such functions are reserved to the hearing officer. Claimant stated that the time report was a "mistake" on his part. In the opinion of the Board, claimant's leaving the premises by climbing over the 10-foot fence, throws suspicion on the entire affair.

Based upon the entire record, the Board finds substantial evidence was produced at the investigation in support of the charge against claimant, and considering his prior work record, which was far from satisfactory, there

is no proper basis for this Board to interfere with the discipline imposed by the Carrier. The introduction of claimant's prior work record in the investigation was not in violation of the Agreement or prejudicial to claimant.

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; and

That the Agreement was not violated.

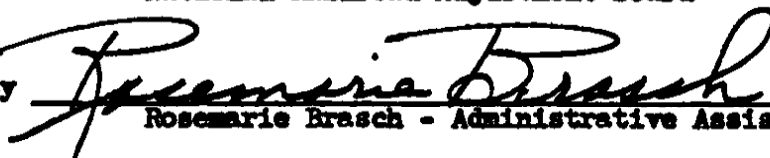
A W A R D

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 13th day of May 1983.