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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24604
Docket Number SG-24792

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Louisville and Nashville Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville & Nashville Railroad Company:

That the Signal Department seniority of Mr. P. N. Phillips be fully restored. [Carrier file: 15-55(81-1004)]

OPINION OF BOARD: The record shows that Claimant was employed by Carrier as an assistant signalman on November 4, 1980. He was furloughed from the Signal Department on January 12, 1981. The Carrier contends that Claimant then transferred from the Signal Department to the Maintenance of Way Department and commenced work in that Department on March 31, 1981.

There is no evidence in the record of any bona fide transfer of Claimant from the Signal Department to the Maintenance of Way Department. The fact that Claimant may have gone to work in the Maintenance of Way Department while furloughed from the Signal Department, had no effect upon his seniority in the Signal Department. It would have had an effect if he had stood to be recalled to work in accordance with the Agreement covering Signal Department employees and decided to continue in the Maintenance of Way Department.

While working in the Maintenance of Way Department, Claimant was terminated in accordance with that part of the discipline rule covering Maintenance of Way Department employees reading:

RULE 27 - DISCIPLINE AND INVESTIGATION

"27(a) Employees disciplined, demerited, or dismissed will be informed of the cause for such action in writing if requested.

27(b) An employe disciplined, shall, upon making a written request to the Division Engineer, within 10 days from date of information, be given a fair and impartial hearing within 10 days thereafter. Decision will be rendered within 30 days from date investigation is completed. The employe shall have a reasonable opportunity to secure the presence of necessary witnesses and may be represented by the elected committee of the employes or fellow employes of his own choosing."

Claimant did not request a hearing, to which he would have been entitled under Rule 27(b), if desired. It must be accepted, therefore, that his termination in the Maintenance of Way Department was proper. In the notice of dismissal, Claimant was advised:

"... this is to advise you that you are dismissed from the service of the Louisville & Nashville Railroad Company."

With his service having been terminated by the Carrier and the termination accepted by the Claimant, we do not consider that he had further rights with the Carrier, in the Maintenance of Way Department or the Signal Department. In First Division Award No. 13322 it was held:

"The claimant's right to exercise seniority as a switchman vanished at the moment he conceded his discharge as Assistant Yardmaster to be for justifiable cause. When, as a consequence of such a discharge, he ceased to be an employe of the D&RGW, he also ceased to be among those included within the scope rule of the prevailing Switchmen's Agreement. Therefore, he was not entitled to the investigation provided in Article XVI of that contract."

In Third Division Award No. 18426 it was held:

"The right of the Claimant to exercise his seniority rights under any agreement depends on there being in existence an employe-employer relationship between the claimant and the Carrier. A procedurally correct and substantively well based dismissal of Claimant effectively severed that relationship. A condition precedent to the right to invoke the discipline rules of the Clerks' Agreement was extinguished with said dismissal."

See also Award No. 12104.

The claim herein will be denied.

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 Employes involved in this dispute are respectively Carrier and Employe 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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1984.