

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24740  
Docket Number MW-24884

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

(1) The dismissal of B&B Foreman R. G. Plasky was without just and sufficient cause and on the basis of unproven and disproven charges (System File C#10/D-2489).

(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: Claimant Plasky was a B&B Foreman on the Chicago Suburban Division and performed his duties under Supervisor J. A. Goebel. On April 16, 1981 Claimant was verbally advised he was dismissed from service of the Carrier. The verbal notice was confirmed by letter wherein charges against Claimant stated as follows:

"This will confirm my verbal advice to you at Fox Lake, Illinois on the morning of Thursday, April 16, 1981, that you are discharged from the service of the Milwaukee Road because of:

Your failure to properly carry out your duties as B&B Foreman when you:

- 1) purchased automobile parts from Tom's Auto Mart in Grays Lake for your personal use during working hours on the morning of April 15, 1981, and hauled them in a company vehicle;
- 2) failed to carry out my instructions to work at Rondout painting the inside of the tower on April 15, 1981;
- 3) failed to protect your assignment when you absented yourself from members of your crew who were working at Rondout on April 15, 1981;
- 4) absented yourself from duty on the afternoon of April 15, 1981 without proper authority;
- 5) consumed alcoholic beverages during working hours on the afternoon of April 15, 1981 in the Ship and Shore tavern at Fox Lake;
- 6) failed to give factual information to Company Police officers on the afternoon of April 15, 1981, when questioned about your activities on April 15, 1981;

- 7) absented yourself from duty and from members of your crew when you were observed in the 'Lagoon' bar in Fox Lake during working hours on the afternoon of April 13, 1981 instead of working with your crew at Rondout tower;
- 8) failed to properly supervise a member of your crew when you permitted him to wear tennis shoes while working on or about April 1, 1981;
- 9) permitted an employee under your supervision to drive a company vehicle without having proper and valid drivers license;
- 10) failed to follow my instruction when you allowed fellow employee who was under your jurisdiction to use company vehicle for his own personal use, including driving home at night;
- 11) absented yourself from your crew on or about March 18, 1981 while working in the Rondout tower placing tile on the floor;
- 12) failed to give factual information regarding your activities when questioned about absenting yourself from crew on or about March 18, 1981;
- 13) failed to report the disappearance of company property, a Homelite chain saw during March 1981, which was assigned to your crew while you were assigned to the B&B Foreman's position at Fox Lake;
- 14) spent an hour in the restaurant at Round Lake around the middle of March 1981 from about 7:30 a.m. to 8:30 a.m. with your crew, during working hours;
- 15) did not advise us about a parking ticket received by truck 471 assigned to your crew while you were working as Foreman of the Western Avenue B&B crew on December 18, 1980, and did not make arrangements to take care of the parking ticket.

In view of the above incidents and your past record, including falsification of time sheets, not protecting your assignment and absenting yourself from your crew for which you had previously been warned not to do, you are discharged from the service of the Milwaukee Road."

Claimant requested a hearing on the dismissal action which was held on April 30, 1981 in accordance with Rule 18 of the parties' Agreement. The hearing dealt extensively with the various charges. Evidence adduced included affidavits as well as reports of investigating officers and Claimant's supervisor. Without discussing each of the charges and the detailed evidence relative thereto suffice it to say the evidence was substantial in support of the charges. Claimant's

conduct had been under suspicion for sometime. As a result, Carrier police had set up surveillance procedures on his movements and actions during working hours. Where his actions were questioned during the hearing his explanations or denials were refuted by evidence from other sources adduced during the hearing.

In generalizing the charges upon which the dismissal action was based we find Claimant absented himself from the job without proper authority thus leaving his B&B Gang without the kind of supervision he was designated to provide; claimed to have received telephone authority to be off duty at times when affidavits from employees he supposedly called stated no such calls were ever received; was unable to account for or give a credible explanation for company property entrusted to his care; spending time at a bar and seen drinking beer during working hours; allowing company vehicles to be driven home overnight by employees under his supervision in violation of instructions; allowing employees to work in dangerous conditions without required safety shoes and failing to work assignments as assigned and instructed. Taken collectively the Board finds they constitute more than adequate grounds for dismissal. In no case was Claimant's defensive explanations credible when measured alongside Carrier evidence in support of the charges.

On the whole the proven charges support Carrier conclusion that Claimant's actions and work attitude manifest a lack of respect and regard for his responsibility as a foreman and employee. The quantum of evidence is more than ample in support of the many charges against Claimant and fully supports severe disciplinary action. Moreover, when coupled with his prior disciplinary record which is far from exemplary we must state that dismissal was fully justified.

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

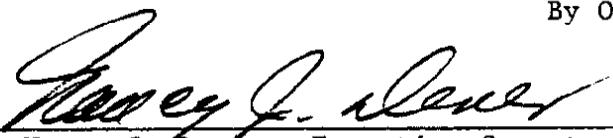
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March, 1984.