

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24991
Docket Number MW-25016

Paul C. Carter, 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 Laborer R. J. Sandoval for alleged violation of Safety Rule 'No. 5' and Operating Rule Nos. '700' and '708' was without just and sufficient cause (System File C#20/D-2508-1).

(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: The record shows that Claimant, employed as a laborer, had been in Carrier's service since September, 1978. On July 23, 1981, he was dismissed from service for alleged violation of Carrier's Safety Rule No. 5 and Operating Rules Nos. 700 and 708. The rules read:

"Safety Rule No. 5:

The use of alcoholic beverages or narcotics by employes subject to duty is prohibited. Being under the influence of alcoholic beverages or narcotics while on duty or on Company property is prohibited. The use or possession of alcoholic beverages or narcotics while on duty or on Company property is prohibited."

"Operating Rule No. 700:

Employes will not be retained in the service who are careless of the safety of themselves or others, disloyal, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner that the railroad will not be subjected to criticism and loss of good will."

"Operating Rule No. 708:

Employes are prohibited from having loaded or unloaded firearms in their possession while on duty except those employes authorized to do so in the performance of their duties or those given special permission by the Superintendent."

Claimant requested a hearing in connection with his dismissal. The hearing was scheduled for and conducted on August 10, 1981, following which the Carrier affirmed the Claimant's dismissal. A copy of the transcript of the hearing conducted on August 10, 1981, has been made a part of the record.

There was substantial evidence presented in the hearing on August 10, 1981, to the effect that Claimant was on the Carrier's property in an intoxicated condition about 3:00 A.M., July 22, 1981; that he was in possession of a pistol and that he threatened a Security Guard and another employe. There were conflicts between the testimony of the Claimant and others; however, it is well settled that this Board does not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Such functions are reserved to the Carrier. The Board may not properly reverse the decision of a Carrier simply because of conflicts in testimony.

This Board has issued numerous awards upholding the dismissal of employes for being in possession of firearms while on Company property. See Third Division Awards Nos. 23349, 20693, 20199, and Second Division Awards Nos. 6938, 6692 and 9299.

There is no proper basis to disturb the discipline imposed by the Carrier.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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. Defer - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.