

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25016
Docket Number MW-24813

Eckehard Muessig, 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 Foreman J. R. Klein for alleged violation of 'Rules 700B and 708' was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System File C#11/D2491).

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

OPINION OF BOARD: This claim arose as a result of Carrier's finding that the Claimant had a firearm in his possession on Carrier's property and that he allegedly instructed employes under his jurisdiction to dispense gasoline, which had been purchased with the Carrier's credit card, into his personal vehicle. The Carrier contends that the record clearly establishes its finding of guilt, on both counts, and, accordingly, holds that its dismissal of the Claimant was proper.

The Organization, both in its appearance before this Board and in the record, objected to the actions of the Carrier on a number of grounds. Its primary contention, from which the others flow, with respect to the firearm charge, is based on the assertion that the firearm was safely stored in the Claimant's personal vehicle. Accordingly, because it construes the controlling rule as one which concerns and prohibits carrying a firearm on the person, which was not the case herein, a violation did not occur.

With respect to the charge that Claimant obtained Carrier's gasoline for use in his personal vehicle, it maintains that this charge runs counter to that which is found in the record. It points out that the Claimant denied the charge. Moreover, he never had been issued a Carrier gasoline credit card and, accordingly, could not have been involved, as charged. In summary, it has provided a number of reasons to argue that much of the evidence, on which the Carrier relied to sustain its finding that the Claimant used its gasoline, had no probative value.

The Board has thoroughly reviewed the record before it and, although the Organization's forceful arguments are not without merit, we find substantial evidence that sustains the Carrier's conclusions. A number of awards upholding the dismissal of employes for being in the possession of firearms, while on Company property, have been issued by this Division. We find that in the instant case, there is no proper basis to interfere with the discipline assessed by the Carrier and the claim is denied.

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.