

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25131
Docket Number MS-25239

M. David Vaughn, Referee

PARTIES TO DISPUTE: (Pat H. Bishop, Jr.
(
(Seaboard System Railroad (L&N Railroad Company)

STATEMENT OF CLAIM:

"This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of (my) (our) intention to file an ex parte submission on (30 days from date of this notice) covering an unadjusted dispute between (me) and the L&N involving the question:

Claim - I was targeted through no faults of my own. The L&N R/R violated the rule book a number of times in order to find one rule violation in order to discharge me."

OPINION OF BOARD: Claimant Pat Bishop, Jr. was employed as a Track Repairman by the Carrier's predecessor company, the Louisville and Nashville Railroad, the Agreements and employees of which the Carrier assumed through merger. Claimant was assigned to an extra gang working out of and living in camp cars which were spotted on a siding in Memphis, Tennessee.

On December 17, 1981, the Carrier received information that narcotics or other contraband was being kept in the camp cars. Carrier officials inspected the camp cars that evening, including the lockers of individual employees, having first obtained permission from the occupants of the cars. The Carrier's agents searched Claimant's locker, which was unlocked, after Claimant advised them that he had nothing to hide and that they were free to search the locker. The agents found in Claimant's locker a loaded "Bulldog 44 Special" revolver and a box of cartridges. Claimant admitted to the agents that the pistol belonged to him.

Following notice to Claimant and an investigatory hearing, the Carrier dismissed Claimant for violation of Rule AA of the Rules and Instructions of the Maintenance of Way Department, which states:

"Employees, other than commissioned police officers and those vested with police powers are prohibited from carrying or having firearms and concealed weapons on Company property."

Clearly, the camp cars were company property, the pistol was a firearm, concealed, and Claimant was not vested with police powers.

Claimant did not challenge the testimony of the Carrier's witnesses as to the facts recited above. Indeed, he acknowledged that the pistol was his and that he had given Carrier's agents permission to search the locker where it was found. Claimant's only complaint at the hearing was that one of the Carrier's agents had been hostile and profane toward him when the agent found the pistol after Claimant had initially denied having a gun. Claimant allegedly "forgot" that he had the gun in his locker.

The ex parte submission filed on Claimant's behalf raises a number of factual assertions not raised at the hearing and makes arguments based on those assertions. The Board's precedents are clear that the factual record which may be considered is limited to that presented at the hearing:

"...In accordance with Board precedent, no new materials can be introduced before the Board which have not been made a part of the record on the property." Third Division Award 24508.

The Board may not, therefore, consider Claimant's posthearing factual statements and documentation.

The arguments raised on Claimant's behalf are, in any event, simply unverified assertions of limited evidentiary significance, unpersuasive and of limited relevance to the charges against Claimant. While an employer's discretion to search the lockers of employees is not unlimited, there is no blanket requirement that searches be limited to those for which a warrant is obtained. Nor is there any requirement in the industrial setting that violations be limited to those based on possession of items which were the stated purpose of the search. Indeed, whatever claim of improper search might exist was waived by Claimant when he gave Carrier's agent permission to search his locker.

Similarly, Claimant's protest that other employees also violated rules but were not punished as was Claimant is unavailing. The matters of the other employees are not before this Board and are not part of the record, but it is clear from the statement submitted by one of Claimant's fellow employees in whose possession marijuana was found and who was subsequently dismissed by the Carrier and referred to law enforcement authorities, that the Carrier did not limit its enforcement of the rules to Claimant.

Finally, it is asserted on Claimant's behalf that the Carrier had suspended its rules because the camp cars were located in an unsafe area and that Claimant had a right to protect himself from unsafe conditions which the Carrier was improperly allowing. No evidence exists that Carrier had "suspended its rules" or even that the location of the camp cars was unsafe so as to require action by the Carrier. What is clear is that Claimant lacked the right to resort to self-help, in violation of the Carrier's rules, to remedy whatever safety violation he might have perceived.

The possession of handguns on the Carrier's premises by employees not authorized to have them is a potentially serious problem for the Carrier in light of its right to maintain a safe and orderly workplace and to protect fellow employees and the public from danger. Claimant clearly violated the Carrier's Rule designed to control that danger. Board precedent is clear that violation of rules prohibiting the possession of guns is a serious offense, warranting dismissal. See, for example, Third Division Award 23349 and cases cited therein; Awards 20199 and 24349.

The Board concludes that the Claimant's violation of the rules was clear and that his dismissal was not arbitrary or an abuse of discretion. Accordingly, the Board concludes that the Agreement was not violated, that the dismissal must be upheld, and that the claim must be, and it is, denied.

The Board notes that Claimant had requested a hearing before the Referee in the matter and that the Members of the Division convened at the time and place stated in the notice to Claimant for the purpose of affording him that right. Neither Claimant nor a representative appeared, and the Board thereafter undertook its review and determination of the claim based upon the written submissions of the parties.

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 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 9th day of November 1984.