NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25198

THIRD DIVISION

Docket Number MW-25404

James Robert Cox, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Union Pacific Railroad Company

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

(1) The dismissal of Section Foreman R. G. Lopez for alleged "violation and General Notice, General Rule B and G and General Regulation 700 and 702(B) of the M/W and Signal Rule Book" was without just and sufficient cause and on the basis of unproved charges (System File 5-19-11-14-55).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant R. G. Lopez, a Section Foreman assigned to Section Gang 5109, was laying a #9 switch for a Letica work order near Jean, Nevada, June 28, 1982, working along with another Section headed,by Foreman Herrera.

Responding to a complaint from a nearby landowner, two Company officials proceeded to the scene shortly after 3:00 P.M. that day. Both testified they observed Mr. Lopez driving a Company vehicle assigned to Herrera on the complainant's property trying to run over his dog. After the Supervisors stopped the vehicle, they noticed that Lopez smelled of whiskey and found a partially consumed fifth of Canadian Club on the floor of the passenger side of the truck where Mr. Herrera was seated. Herrera acknowledged that he had noticed the bottle about 2:45 p.m. Both men denied drinking. Company evidence indicated that Lopez appeared to be under the influence of alcohol.

Mr. Lopez asserted that he had previous problems with the landowner. When asked by the Supervisors about the bottle, Lopez responded that he "guessed" it was the Supervisor's. At the Hearing Lopez explained that the bottle of Canadian Club came probably from the distillery and accounted for the smell of alcohol on his breath by attributing it to having drunk cough syrup for a bad cold. He did not deny that he had tried to run over the dog but explained that the animal had attacked him in the morning when measuring the switch, that he threw rocks and hit the dog. He said that he told the landowner, who came on to the scene, to keep the dog chained or he "will take some measure and get him out of there." He admitted driving on private property, asserting that he was running late.

The evidence indicates that it was not necessary for access to the work site to drive over the landowner's property and that signs read to "Stop. Keep out". The dog, which the Supervisors observed Lopez trying to run over, was then chained near a building 300 or 400 feet away from the main line switch.

The regular hours of Mr. Lopez's Section were from 7:00 a.m. to 3:30 p.m. When apprehended by the Supervisors, Lopez was driving with Section men in the rear of the Pickup. Lopez was stopped at 3:23 p.m. Both men were removed from service.

While the Organization contends that there was no basis for such a removal, the Board finds that the conduct was an egregious and serious and flagrant violation of Company rules warranting Lopez's removal under Rule 48(O).

A Hearing was conducted July 8, 1982. Mr. Lopez was dismissed in a determination issued July 21, 1982 for violation of General Notice, General Rule B and G and General Regulations 700 and 702(B) of the M/W and Signal Rule Book.

Mr. Lopez had last entered the service of the Union Pacific Railroad in June 29, 1953. The General Rules he was charged with violating referred to obedience of the Rules and special instructions [General Rule B], an Injunction against being under the influence of alcoholic beverages while on duty or use or possession of alcoholic beverages while on duty [Rule G], the specification that employes are not to be retained in the service of the Carrier when careless of the safety of themselves or others or if they do not conduct themselves in a manner that the Railroad will not be subject to criticism and loss of goodwill [700], and employees must comply with instruction from proper authority [702(b)].

Claimant's Transcript of Service reveals previous dismissals for various infractions in December, 1971, February, 1974, October, 1974, May, 1976, September, 1977, and September, 1979-each time followed by reinstatement on a leniency basis. The reinstatements without pay occurred after periods of lost time ranging from more than five years to three months. Significantly, the 1971, 1976 and 1977 violations were, like the 1982 incident associated with transgressions of Rule 700 and 702. In addition, Claimant received demerits for a violation of Rule 702(B) in April, 1975.

Upon careful review of the evidence, the Board finds that the Carrier did have just and sufficient cause for dismissal of Mr. Lopez. His Supervisor's opinion that he had been drinking and was under the influence of alcohol is substantiated by his unusual and improper conduct prior to his apprehension. There was no denial that he was trying to run over a dog while driving a Company vehicle in a reckless manner on private property carrying two Section men in the back of the pickup truck which contained a partially consumed fifth of Canadian Club--a bottle which had been in the truck, according to Lopez's passenger, for at least 45 minutes prior to the time that the vehicle was stopped by supervision. His careless operation of this pickup endangered the safety of his passengers. Claimant's prior discipline record does not provide any basis for mitigation.

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 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. Dever - Executive Secretary

Dated at Chicago, Illinois this 11th day of January 1985.