

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25592  
Docket Number MW-25798

Paul C. Carter, Referee

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

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

"(1) The dismissal of Truck Operator J. O. Saunders for alleged 'violation of the General Notice, General Rules B and E, General Regulations 700, 701, 702(B) and 705, and Automotive Equipment Rules 5 and 6' was arbitrary, capricious, unwarranted and on the basis of unproven charges (System File 6-22-11-14-55/013-210-5).

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

OPINION OF BOARD: At the time of the occurrence giving rise to the dispute herein, Claimant had seventy days service with the Carrier. He was assigned to the Carrier's System Surfacing Gang, working on Carrier's Wyoming Division, near LaSalle, Colorado, operating a fuel truck. The gang with which Claimant had been working moved to Carrier's Nebraska Division, and Claimant was advised to move with the gang. The fuel truck that Claimant had been operating was to remain in Wyoming, and Claimant asked the Division Engineer (Wimmer) if he could remove his personal belongings from the truck. Division Engineer Wimmer gave such permission.

On October 19, 1982, Claimant arrived at the location of the truck and began to remove various objects from the truck. The newly assigned truck driver thought that Claimant was removing what appeared to be Company property, and called the foreman. The foreman testified in a formal investigation conducted on October 29, 1982, that when he attempted to question Claimant about some of the items Claimant stated to the foreman that he "was in no mood to take my s...t." The foreman called the Division Engineer and as the latter was approaching the truck site, Claimant told the foreman that "he didn't have time to play Mr. Wimmer's silly games," and drove off, taking the disputed items with him, notwithstanding the foreman's request that Claimant wait until Mr. Wimmer got there.

It was also developed in the investigation that the Division Engineer and the foreman followed Claimant to a service station. When Claimant was asked about the items removed from the truck, he at first refused to discuss the matter, stating that he would do so "when he was good and ready"; that Wimmer "had better call the police" if he wanted to retrieve the goods; and that Wimmer would need a search warrant. Claimant also told Wimmer that he would ram Wimmer's car if he did not move it out of Claimant's way. There was also evidence in the investigation showing that several of the items removed from the truck by Claimant were Carrier's property.

We have reviewed the entire transcript of the investigation and find that substantial evidence was presented to show that Claimant was insubordinate and that he did improperly remove Company property from the truck. Improper removal of company property and acts of insubordination are grounds for dismissal. See Awards 24993, 24732, 24666, 24387, 23348 and 22745. There is no proper basis for the Board to interfere with the discipline imposed by the Carrier.

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

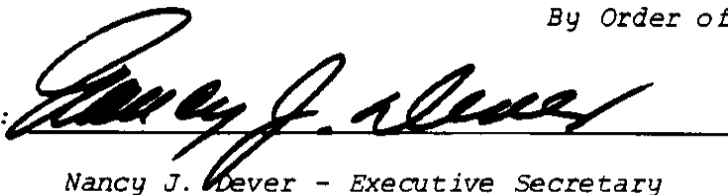
That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of August 1985.

