

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25624

Docket Number MW-25855

Referee John W. Gaines

PARTIES TO DISPUTE: ( Brotherhood of Maintenance of Way Employees  
( National Railroad Passenger Corporation (Amtrak)

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

"1. The dismissal of B & B Carpenter A. T. Smith for alleged violation of Rules 'I' and 'K' was without just and sufficient cause and on the basis of unproven charge (Carrier's File BMW-E-D-029).

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: The violation alleged was more specifically stated in Carrier's Notice sent Claimant under date January 4, 1983, and reading:

"You are hereby directed to appear for formal investigation for your alleged violation of Rule 'I' and 'K' of the National Railroad Passenger Corporation Rules of Conduct, in that on January 3, 1983 at approximately 8:30 a.m., while on duty as a B & B carpenter at LAUPT, you absented yourself from your assigned work area and additionally was found in the portion of an Amtrak vendors truck searching the contents of his vehicle without his permission, thereby subjecting the company to criticism and loss of goodwill."

After some postponements, the investigative hearing was held, resulting in conflicts between the testimony of Claimant and an Amtrak vendor who was called as one of Carrier's witnesses. Their conflicting testimony as to the violation involved various attendant circumstances, particularly some explanation for the conceded fact that Claimant, on duty, had gone to the parking lot and happened to be inside the back of the vendor's loaded catering truck with the doors closed.

The hearing was followed by a Carrier letter dated January 14, 1983, dismissing Claimant.

The Organization objects to the decision of the Hearing Officer who obviously must have accepted the probity of the testimony of the vendor, who appeared as sole witness to the Claimant's actual occupancy inside the back end of his, the vendor's, closed up truck. It is the Hearing Officer's function, not ours, to sift and weigh evidence in resolving conflicts and observe each witness as to demeanor and to inflection and content as he testifies.

We will deny the Claim. We find there was substantial evidence before the Hearing Officer to support his decision. Because of Claimant's record showing a discipline violation in the past of NRPC Rule "I" and "J" resulting in a prior dismissal in 1979, and inasmuch as the past record may be noted when assessing discipline, the discipline imposed in the Officer's decision of dismissal cannot be judged arbitrary or excessive.

Carrier and the Organization are each one protesting procedural irregularities technically committed by the other. What they are contending in connection with these disciplinary procedures has not interfered with the rights of both parties to due process and cannot be deemed prejudicial to Claimant in view of this disposition going fully to the merits of his claim.

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 19th day of September, 1985

