

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25707
Docket Number MW-25778

David P. Twomey, Referee

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

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

(1) The dismissal of Camp Overseer M. Brown for alleged violation of 'Rules "I" and "J"' was without just and sufficient cause and on the basis of unproven charges (System File NEW-BMWE-SD-500D).

(2) Camp Overseer M. Brown shall now be allowed the benefits prescribed in Agreement Rule 74(h)."

OPINION OF BOARD: The Claimant, Mr. M. Brown, entered the Carrier's service as a Trackman on March 12, 1977. On August 12, 1982, Mr. Brown was assigned as Camp Overseer at the TLS Campsite at Odenton, Maryland. By letter dated August 12, 1982, Mr. Brown was notified to attend a trial on August 30, 1982, concerning the following charges:

"In connection with the incident which occurred on August 12, 1982, at the TLS Campsite at Odenton, MD, M/W facility near MP 114.5, approximately 11:00 a.m., whereby you stole personal property (Briefcase) from Heiser Corp. employee, Kevin Coyle's Company vehicle, and struck hood of the same vehicle with your fist, as well as using abusive language toward Mr. Coyle during the incident, your conduct being in violation of Amtrak General Rules, 'I', and 'J', which read:

"Rule 'I'...Employees will not be retained in the service who are insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such manner that the Company will not be subjected to criticism and loss of good will.

"Rule 'J', which reads in part...Courteous conduct is required of all employees in their dealing with the public...and each other...boisterous, profane or vulgar language is forbidden."

The trial was postponed and rescheduled and held on September 13, 1982. Following the trial, Mr. Brown was notified that he was assessed the discipline of dismissal in all capacities.

The Organization contends that the charges against Mr. Brown were not supported by positive testimony; that the discipline was harsh and excessive, and the discipline of dismissal was assessed based on Mr. Brown's past record and not on the facts of the instant case. The Carrier disagrees.

Mr. Brown admitted at the trial that he took Mr. Coyle's briefcase and struck the hood of Mr. Coyle's vehicle. Mr. Coyle testified that Mr. Brown took his briefcase without permission, pounded on the hood of Mr. Coyle's vehicle and used abusive language. We find that this testimony of both Mr. Coyle and Mr. Brown constituted substantial evidence of record in support of the Carrier's finding of violations of Rules "I" and "J". We find that it was not error for the Trial Officer to enter Mr. Brown's past disciplinary record into the Trial record at the end of the proceedings for the limited purpose of considering the measure of discipline to assess, should the instant charge against Mr. Brown be proven. We find that the record in this case does not reveal that Mr. Brown's past record influenced the decision or guilt, but was properly used to assess the measure of discipline after his guilt was established by substantial evidence of record including his own admissions. We find that in the context of the proven Rules violations of the instant case, and his less than satisfactory past disciplinary record, the discipline of dismissal is neither arbitrary, capricious nor excessive. We shall deny this 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 hearings;

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

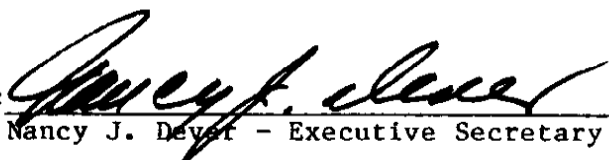
That the Agreement was not violated.

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 14th day of November 1985.

