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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25796
Docket Number MS-25698

Paul C. Carter, Referee

PARTIES TO DISPUTE: (John David Brown
(
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"A. Certain facts leading to the assault on Foreman Glen A. Loveless and the dismissal of Bus Driver John David Brown which are pertinent to the case but were never disclosed.

B. That the case of John David Brown be tried with the facts at hand, not with the facts of trial date June 18, 1982."

OPINION OF BOARD: The Claimant, the Petitioner herein, entered Carrier's service on November 2, 1976, as a Trackman and, at the time of the occurrence giving rise to the dispute herein, was assigned to the position of bus driver in Gang No. 122 on Carrier's Philadelphia Division.

On June 18, 1982, Claimant was notified to attend a Trial on June 29, 1982, on the charges:

"Violation of Rule 'I' of Amtrak's Rules of Conduct, that part which reads, Employees will not be retained in the service who are...quarrelsome or otherwise vicious...', violation of Rule 'J' of Amtrak's Rules of Conduct, that part which reads, 'Courteous conduct is required of all employees in their dealing with...each other...Violence, fighting...threatening or interfering with other employees...is prohibited', and violation of Rule 'F' of Amtrak's Rules of Conduct, that reads, 'Safety is of the first importance in the discharge of duty...employees...must exercise care to prevent injury to themselves and others. Employees will not be retained in the service who are careless of the safety of themselves or others.'

"Specification: a) In that on June 11, 1982, at approximately 12:30 p.m. you threatened the foreman of your gang (G172), Glenn A. Loveless, with physical assault while traveling in Amtrak vehicle No. NM 21445 enroute from Zoo Interlocking to North Philadelphia.

"Specification: b) In that on June 11, 1982 at approximately 1:00 p.m. in the vicinity of 19th Street and Girard Avenue, Philadelphia, PA you assaulted the foreman of your gang, Glenn A. Loveless, causing serious personal injury to him.

"Specification: c) In that on June 11, 1982, at approximately 1:30 p.m. in the vicinity of 19th Street and Girard Avenue, Philadelphia, Pa, after assaulting the foreman of your gang, Glenn A. Loveless, you abandoned him at the above mentioned site and made no attempt to secure medical attention for Mr. Loveless' injuries."

The Trial was postponed and rescheduled for July 6, 1982. The record shows that Claimant was present at the Trial on July 6, 1982, and was represented by a duly accredited Representative of the Brotherhood of Maintenance of Way Employees. A copy of the Transcript of the Trial has been made a part of the record. Following the Trial, a notice of discipline dated July 21, 1982, was sent to Claimant via Certified Mail notifying him of his dismissal in all capacities.

We have reviewed the Transcript of the Trial and find substantial evidence, including Claimant's statement, to sustain the charge against Claimant. The Trial was conducted in a fair and impartial manner. There was no proper basis for the objection raised concerning the Trial notice. The objections were not of sufficient significance to invalidate the proceedings.

In the investigation the Claimant alleged a shortage in his pay; that the Foreman would not do anything about it, and "I hit him." The Foreman testified as to the extent of his injuries:

"Q. Mr. Loveless what was the extent of your injuries?

A. I received bruises about the face, compound fracture on my nose, laceration of my nose requiring five stitches."

The Claimant stated that he was "provoked." Numerous awards of this Board have held that provocation does not justify physical assault. See Awards Nos. 13684, 20314, 24368 and 24911.

Carrier's action in dismissing Claimant from service was not arbitrary or capricious, but was fully warranted. The claim will be denied.

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

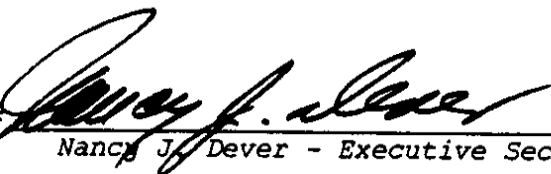
That the Agreement was not violated.

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 12th day of December 1985.