

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26250
Docket Number SG-26833

Edwin H. Benn, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation (Conrail))

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the
Brotherhood of Railroad Signalmen on the Consolidated
Rail Corporation (Conrail):

On behalf of Signalman H. E. Black who was dismissed from service
effective November 2, 1984, for alleged conduct on October 12, 1984. Carrier
file: SD-2176-D."

OPINION OF BOARD: Claimant was employed by the Carrier as a Signalman for 29
years.

On the way to work on October 12, 1984, Claimant purchased a 25 cali-
ber handgun from an individual. Claimant testified that he was aware that he
would have to register the gun and was planning to do so at the end of his
tour of duty that day. While at the worksite, but before his scheduled start-
ing time, Claimant showed the gun to several employees. The Carrier's Super-
vision became aware of the incident and contacted the Carrier's Police Depart-
ment. Two Investigators came to the worksite, searched Claimant and discov-
ered the handgun in Claimant's pocket. An ammunition clip with five bullets
was found in the gun. Further search disclosed fifteen more rounds of ammuni-
tion. Claimant was then turned over to the Cleveland Police. Claimant was
arrested and charged with carrying a concealed weapon (a felony). The record
does not reveal the ultimate disposition of the criminal charge.

After Hearing, by Notice dated November 2, 1984, Claimant was dis-
missed from service. Aside from the instant discipline, Claimant's record
shows no prior disciplinary matters.

As stated in Third Division Award 21323, in upholding the discharge
of an employee with 39 years of service:

"On many occasions this Board has held that years
of service alone does not mitigate improper conduct
by employees and this case is no exception. While
we are reluctant to sustain the ultimate penalty of
dismissal for long service employees, it cannot be
said that the decision of Carrier in this case was
arbitrary or capricious; the Carrier possesses
considerable latitude in the imposition of
discipline and under the circumstances herein we
are not inclined to substitute our judgment for
that of Carrier."

With respect to the possession of firearms on a Carrier's property, we said in Third Division Award 25016:

"A number of awards upholding the dismissal of employees for being in the possession of firearms, while on Company property, have been issued by this Division. We find that in the instant case, there is no proper basis to interfere with the discipline assessed by the Carrier and the claim is denied."

We believe that the reasoning in the above awards guides us in this case. Our function is to review the record to determine if substantial evidence exists to support the charge against Claimant. Third Division Award 21020. If such substantial evidence exists, then we cannot disturb the Carrier's penalty unless it appears that the Carrier's action was discriminatory, unjust, unreasonable, capricious or arbitrary so as to constitute an abuse of discretion. Fourth Division Award 3490. There is no dispute concerning the facts in this matter. Claimant was in possession of a loaded firearm on the Carrier's property and exhibited that loaded gun to other employees. The Carrier discharged Claimant for the same. Clearly, substantial evidence exists to support the Carrier's charge. We cannot conclude on the basis of those facts that the Carrier's assessment of discharge as discipline was excessive, unjust, arbitrary or capricious as urged by the Organization. As noted above, this Board has upheld discharges for similar misconduct. No mitigating circumstances exist in this matter to require a different result.

It is regrettable that an employee of such long service must be discharged. However, the fact remains that Claimant's misconduct, albeit his first, was of grave seriousness and could have seriously endangered other employees. Claimant's length of service alone, under the circumstances of this case, cannot negate or mitigate his misconduct. Claimant must be presumed to have foreseen the consequences of his acts. In light of our review function, we are compelled to uphold the Carrier's decision to discharge Claimant.

In light of our conclusion that the discipline imposed was supported by the record, it is therefore unnecessary to address the leniency issue raised by the parties.

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

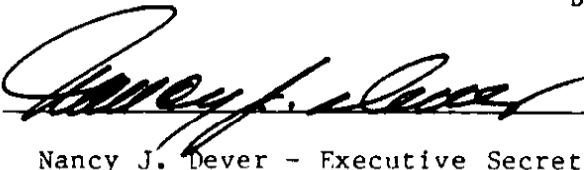
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of March 1987.