

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26336
Docket Number SG-27288

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Rail Passenger Corporation (AMTRAK).

Claim on behalf of P. Crowley for reinstatement to his position as signalman and all rights and benefits restored account of carrier violated the current signalmen's Agreement when it dismissed him from service on September 25, 1985, following an investigation concerning probably violation of certain carrier rules. Carrier file NEC BRS SD 227-D."

OPINION OF BOARD: Prior to the occurrence giving rise to the dispute herein, Claimant was employed by the Carrier as a Signalman in Carrier's Communication and Signal Department, headquartered at Perryville, Maryland.

During the evening of July 19, 1985, while Claimant was off duty, he was arrested by Maryland State Police for driving under the influence of alcohol. When arrested several coils of copper cable were found in Claimant's vehicle, which were identified the next day as company property. On July 22, 1985, Claimant was suspended from Carrier's service. On July 25, 1985, he was notified to attend Trial beginning at 9:00 A. M., July 31, 1985, in connection with the charge:

"Violation of the National Railroad Passenger Corporation's, Rules of Conduct, Rule 1, which reads in part: 'Employees will not be retained in service who are . . . dishonest . . . or who do not conduct themselves in such a manner that the Company will not be subjected to criticism and loss of good will.'

Specification: In that on July 19, 1985, at approximately 8:30 P.M., as a result of an arrest by the Maryland State Police Department, you were found to have probable stolen material in your possession in your personal vehicle. This material was identified on July 20, 1985 as belonging to Amtrak."

After one postponement, the Trial was held on September 4, 1985. Claimant was present throughout the Trial and was represented. A copy of the Transcript of the Trial has been made a part of the record. On September 25, 1985, Claimant was notified of his dismissal from the service. The Claimant appealed the discipline to the Assistant Chief Engineer-C&S/ET, who denied the appeal. Claim was then progressed to Carrier's highest designated official of appeal by authorized representative of the Organization. On January 27, 1986, the Carrier's Director-Labor Relations responded to the General Chairman, taking the position that there was no dispute in the record that Claimant was carrying cable belonging to the Carrier in the back of his private vehicle at the time he was stopped by Maryland State Police, and that Claimant had no authorization to have the Carrier's property at the time. In the investigation it was developed that there were 250 to 300 feet of copper cable belonging to the Carrier in Claimant's private vehicle. The Carrier Officer went on to contend that there was substantial evidence adduced at the Trial in support of the charge against Claimant, and that the contentions raised by Claimant in his defense were unpersuasive and self-serving.

The Director of Labor Relations, in his letter of January 27, 1986, did propose a compromise offer in full and final settlement of the dispute, under which Claimant would be restored to service without pay for time lost and under other specified conditions. No response was received by the Carrier and the Director of Labor Relations again wrote the General Chairman on June 13, 1986. On July 3, 1986, the General Chairman advised the Carrier of the difficulty that he (the General Chairman) had experienced in contacting the Claimant, and went on to state:

"(claimant) is fully aware of the letter of understanding and its contents. For no apparent reason the terms of the letter of understanding are not agreeable to him."

It is well settled that offers of compromise made in an effort to settle disputed Claims prior to referring them to this Board are not permissible evidence. (Second Division Award No. 4334, Fourth Division Award No. 3829).

Based upon the entire record, the Board finds that the Trial was conducted in a fair and impartial manner; that there was substantial evidence adduced at the Trial in support of the charge against Claimant, and, considering the nature of the offense, dismissal from the Carrier's service was justified. Any request for leniency on behalf of Claimant addresses itself to the Carrier and not to this Board.

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 8th day of June 1987.