

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26592
Docket Number MS-27100

John E. Cloney, Referee

PARTIES TO DISPUTE: (Richard Hansen
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(Metro North Commuter Railroad

STATEMENT OF CLAIM: "Management labeled me insubordinate and claims that I refused to work which caused my immediate dismissal from the company on November 9, 1985, by a production engineer who was a Mr. Daniel K. Miller and also Mr. Richard Collins."

OPINION OF BOARD: Claimant, who was also a Shop Steward, was working as a Truck Driver assigned to a work train on November 9, 1985.

On that date he and two others who were also assigned to the work train were taken out of service by the Production Engineer. Claimant was subsequently notified to attend a Hearing on December 3, 1985, in connection with charges of:

"Insubordination in that you refused direct orders given to you by Asst. Supervisor M. Hermance and Production Engineer, D. K. Miller, to assist in the removal of tie plats from scrap ties at OW Interlocking at approximately 11:30 A.M. on November 9, 1985."

The Notification stated in part:

"You may produce witnesses on your own behalf, without expense to the Company, and your representative may cross-examine witnesses."

Hearing was conducted as scheduled. Separate hearings were held regarding the other two employees.

At the Hearing both Supervisors testified. The transcript of the Hearing shows substantial probative evidence was presented which could reasonably lead Carrier to conclude Claimant had taken the position that an assignment made by supervision was not his work and that he refused to do it as ordered. Claimant's contention is that he was merely seeking to clarify instructions at the request of one of the other crew members.

Oral Hearing was requested, granted, and held on June 8, 1987.

Claimant argues he did not receive a fair Hearing due to Carrier's failure to call as a witness a Foreman who had allegedly given the crew an earlier assignment which differed from the one they are charged with having refused to perform.

At the Hearing, in response to the Organization's complaints regarding the Foreman's absence the Hearing Officer pointed out the Organization had been notified in advance of the identity of the witnesses. He also stated the Foreman had retired from the Railroad. Despite Claimant's assertions to the contrary there is no evidence that either Claimant or the Organization had requested the Foreman's presence prior to the Hearing. In this connection we note Claimant had been informed he would be allowed to present witnesses.

Claimant also alleges he was discriminated against because of his activities as a Shop Steward. There is no evidence to support this contention and in fact Claimant testified that he and the Production Engineer, who took him out of service, did not know each other. Further the other employees allegedly involved were also dismissed.

Claimant's appeal to the Senior Manager - Labor Relations was denied by letter dated February 20, 1986. On March 17, 1986, the Senior Manager - Labor Relations wrote the Organization "in an effort to outline a more detailed basis for the denial."

Rule 26(b) of the Agreement provides in part:

"When a claim or grievance is not allowed the Manager - Labor Relations will so notify, in writing whoever listed the claim ... within forty five (45) days after the date the claim ... was discussed of the ... reason therefor. When not so notified, the claim will be allowed."

Claimant contends that although there was notification of denial on February 20, 1986, within the forty five days, no reasons were given until March 17, 1986, beyond the forty five days and accordingly the Claim must be allowed.

The record shows that the Senior Manager - Labor Relations' February 20, 1986, rejection of the Claim stated:

"We have reviewed the hearing transcripts and statements made by yourself and ... (Claimant) at the appeal hearing, and conclude that the Claimant is guilty of the charge. The discipline assessed is commensurate with the proven charge."

It thus appears inaccurate to state that reasons for the denial were not given in the February 20, 1986, letter, notwithstanding that Carrier later felt it appropriate to be more detailed.

As the Hearing produced substantial probative evidence upon which Carrier could conclude Claimant was guilty of insubordination and as the discipline imposed does not in the circumstances appear excessive we shall deny the Claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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

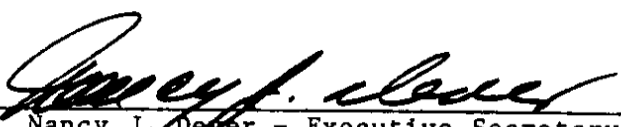
That the Agreement was not violated.

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 27th day of October 1987.