

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Denver and Rio Grande Western Railroad Company

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

(1) The dismissal of Track Patrolman B. L. Hammer for 'alleged insubordination and failure to properly protect your assignment as track patrolman at approximately 7:00 p.m., Friday, December 23, 1983, and Saturday, December 24, 1983' was arbitrary, capricious and in violation of the Agreement (System File D-5-84/MW-2-84).

(2) Mr. B. L. Hammer shall be afforded the benefits prescribed within Rule 28(d)."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

In a letter dated December 30, 1983, the Claimant was advised as follows:

"Formal investigation originally scheduled to be held at 10:00 a.m., Friday, December 30, 1983, in the Superintendent's Conference Room, North Yard, 901 West 48th Avenue, Denver, Colorado, to determine facts and place responsibility, if any, in connection with your alleged insubordination and failure to properly protect your assignment as track patrolman at approximately 7:00 p.m., Friday, December 23, 1983, and Saturday, December 24, 1983, has been postponed at the request of General Chairman Ben Ochoa, BMW, and will now be held at 9:00 a.m., Monday, January 9, 1984, same location."

Following the investigation, the Carrier found the Claimant guilty of the charges and he was dismissed from the service. In determining the quantum of discipline to be assessed, the Carrier considered the Claimant's past record.

The Organization, on procedural grounds mainly, contends that the charge lacked specificity so that it was not possible for it to prepare a defense.

Without prejudice to its procedural and due process arguments, the Organization also asserts that, and has provided extensive reasoning therefor, that the Carrier has not supported its charges, and that the claim therefore should also be sustained on that basis.

The Board has carefully considered the various contentions advanced by the Organization. While they are not without merit, the record of the hearing reveals that the Claimant and the Organization knew and understood the charges. The Organization's line of questioning and its overall aggressive defense of the Claimant clearly would not have been possible without full knowledge of the alleged transgression.

With respect to the merits, the Claimant was aware that he had been scheduled to work from 4:00 p.m. to midnight on December 23, 1983, as a Track Patrolman. At 7:00 p.m., his Supervisor found the Claimant still in his trailer not at work. While it is apparent that the Claimant had some problems relating to his refrigerator and to a water line, he did not protect his assignment after he had told his Supervisor that he would begin patrolling the track. Moreover, he did not later tell his Supervisor that he would not return to work. The Claimant is no newcomer to the Carrier's work place nor is he unfamiliar with the rules of the Carrier as shown by his past record.

Accordingly, while we understand the Organization's strong arguments in the record and before us, the Carrier has carried its burden as to the Claimant's guilt to the charge. Given the Claimant's past record, which included past failures on his part to protect his assignment and two reinstatements on a leniency basis, there is no proper basis on our part to disturb the Carrier's decision in this matter.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1988.