

The Third Division consisted of the regular members and in addition Referee W. F. Euker when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former SCL)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard System Railroad Company (formerly Seaboard Coast Line):

On behalf of A. E. Bullock, II, I. D. No. 177543, for reinstatement to service with all pay and benefits restored beginning September 12, 1986 account of Carrier violated the current Signalmen's Agreement, as amended, particularly, Rule 47, when it failed to properly appraise him and to prove charges against him during the investigation of August 27, 1986, at West Palm Beach, Florida, and also assessed him with excessive discipline. Carrier file 15-47 (86-48)"

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

This is a discipline case dealing with an Assistant Signalmen who was charged with insubordination for failure to comply with an Assistant Signal Supervisor's instructions concerning a Carrier construction truck, plus damage done to said vehicle while in Claimant's custody. A formal Investigation was held on August 27, 1986, following which Claimant was dismissed from the service. The Claim that was appealed in the usual manner on the property included a procedural argument advanced by each side; however, when the Claim was discussed at the highest level on December 16, 1986, it was agreed the Claim would be handled on the merits. For that reason our decision will not address the procedural arguments advanced by either side.

At issue in this dispute is the charge of "unreported damage" to a construction truck which allegedly occurred while assigned to and operated by Claimant, coupled with the charge of insubordination, when Claimant reputedly disregarded an order from his Supervisor not to drive the truck to his motel, a round-trip of approximately sixty miles.

In reference to that portion of the charge relating to the truck damage, primarily the cable and boom; there is clear and emphatic eye-witness testimony from a fellow employee, inculcating the Claimant as the person responsible for the damage and the failure to report as required by Carrier's operating rules. Whether the damage resulted from gross negligence or intentional behavior is not relevant.

The larger question and the issue of greater significance is that pertaining to the Claimant's disobedience of a direct order not to drive the construction truck to the motel on the afternoon of May 29, 1986. The appropriateness of the order was thoroughly discussed in the record, to the extent that issue is germane, and it was amply justified.

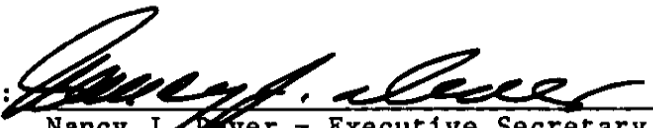
We searched the trial record carefully to determine if there could be any basis for the Claimant's argument that he did not fully understand or comprehend the order, or whether the order was given in such an ambiguous manner that a reasonable person would have misconstrued it. Our search was fruitless. Confronted as we are with such clear and unrefuted testimony proving guilt of the charges, combined with the Claimant's extremely poor discipline record, which shows a prior dismissal and a leniency reinstatement by Carrier, plus a later "last chance" warning, we have no alternative but to deny the Claim.

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 13th day of April 1989.