

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(Soo Line Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10262) that:

1. Carrier's action in the dismissal of Mr. J. F. Overs, Perishable Freight Inspector, effective November 15, 1985, was excessive, discriminatory, arbitrary and capricious.

2. Mr. J. F. Overs shall have his record cleared of all charges which may have been placed against him as a result of this case.

3. Mr. J. F. Overs shall be reinstated to the service of the Carrier with seniority and all other rights unimpaired.

4. Mr. J. F. Overs shall be compensated for all wages and other losses sustained account his dismissal."

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.

Following a November 7, 1985, Investigation, Claimant was dismissed from service to the Carrier. Claimant had been charged and found responsible for driving his Carrier vehicle in front of a rail car resulting in significant damage and personal injury. Claimant reported the cause as being "drowsy from prescribed Haldal and Halcion."

The central issue in this discipline case is the role that prescribed drugs played in the accident. It is the position of the Organization that the tranquilizer and sleeping pill taken by the Claimant impaired his ability to safely perform his duties. The Organization argues that the medications were responsible for the Claimant driving his truck into the path of the moving box car.

It is the position of the Carrier that Claimant was responsible for the accident and that prescribed drugs played no part in the instant case. Carrier argues that the small dosages taken by Claimant at bedtime would not impair his abilities or contribute to the resulting accident.

With respect to the alleged failure to stop his vehicle causing damage and personal injury, a review of the transcript substantiates that Claimant was guilty as charged. This Board finds that Claimant's explanation for his actions does not negate his guilt. The Carrier must require its employees to responsibly and safely cover their assignments. Claimant did not do so and his actions caused serious consequences.

With respect to the quantum of discipline, the Board finds the discipline of dismissal to be excessive in this instant case. The Organization's letter of January 10, 1986, on the side effects of the drug states that "when two or more CNS depressants are taken in combination the effects of both will be multiplied." This is not denied by the Carrier. The Carrier's letters of March 11 and December 8, 1986, do not directly refute the Organization's argument that said medications were a major contributing factor in the accident. Without clear refutation by the Carrier that the medications could not and did not effect the Claimant's abilities, this Board finds the Carrier's discipline excessive. The Board rules that Claimant is to be reinstated to his former position with seniority and all other rights unimpaired, but without back pay and only when a thorough review by the Medical Department confirms that he is capable of safely performing his job.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1990.