

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Burlington Northern Railroad Company (former
(Fort Worth and Denver Railway Company)

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

(1) The dismissal of Welder Helper Van Nelson, III for alleged violation of Rules '... 564, 570, 571 and 576 of Form 15001 ***' in connection with his '... failure to report, for duty September 23, 1989....' was arbitrary, unwarranted, exceedingly harsh and in violation of the Agreement (System File F-89-56/MWD 90-1-26 FWD).

(2) The Claimant shall be returned to service with seniority and all other rights unimpaired and shall be compensated for wage loss suffered in accordance with Rule 28."

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 employees 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.

At the time of the incident at issue in this case, the Claimant was employed as a welder helper, headquartered at Amarillo, Texas. His work week was Monday-Friday with rest days of Saturday and Sunday.

At some time prior to September 23, 1989, a rail detector car had traversed the main line track between Amarillo and Channing, Texas, and had detected more than eighty weld defects in the rail. As a result, slow orders were issued until the track could be repaired. By September 22, 1989, there was still repair work required and work was scheduled for both Saturday and Sunday. All available welding employees, including Claimant, were advised of the weekend work requirement.

It is clear from the on-property record that Claimant understood the Roadmaster's instructions regarding the weekend work, but advised him that he would not work on Saturday because that was his religious Sabbath. The Claimant was subsequently dismissed from service for insubordination on November 3, 1989, but was restored to service by the Carrier on December 11, 1989.

The dispute in this case arose because Claimant, an avowed Seventh Day Adventist, refused to work on Saturday, September 23, 1989, on the basis of his religious beliefs. In disputes of this nature the Board has made a practice of following the guidance of the U.S. Supreme Court's decision in TransWorld Airlines, Inc. v. Hardison, 432 U.S. 63 (1977); Second Division Awards 8226, 8660, 10121, 10291, 10401, 10613, 10927, 11510; Third Division Award 22370. On the record before us, there is no dispute that the Carrier had accommodated Claimant's desire to be absent on his Sabbath in the past, but that in this particular case, his services were needed, and no accommodation was reasonably possible. All available and qualified employees were already being used to effect repairs.

Claimant's action materially hampered Carrier's ongoing effort to correct a serious track problem. Accordingly we see no reason to disturb Carrier's assessment of discipline.

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 19th day of December 1991.