

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29228
Docket No. SG-29445
92-3-90-3-390

The Third Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Port Authority Trans-Hudson Corporation (PATH)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Port Authority Trans-Hudson Corporation (PATH):

Claim on behalf of G. A. Hendricks, for reinstatement to service with all rights and benefits restored, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, the Discipline Rule, when it dismissed him on June 17, 1988." Carrier file DISMISSAL - G. Hendricks. BRS File Case No. 7922- PATH.

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 were given due notice of hearing thereon.

By letter dated June 17, 1988, the Claimant was directed to appear at an Investigation to be held on Friday, June 24, 1988. The purpose of the Hearing was to determine the Claimant's responsibility, if any, for violating Rules 7 and 15. The Claimant was removed from service pending the outcome of the Investigation. After several postponements, the Hearing was held on August 10, 1989.

On August 18, 1989, the Claimant was notified that the charges had been sustained and he was discharged from service.

The Organization requested and was granted an appeal Hearing. Unable to contact the Claimant they requested the Hearing be held in absentia. However, the Claimant did attend the Hearing. Following the Hearing, the charges were sustained and the Claimant remained terminated.

The incident which precipitated the Carrier's actions occurred on June 16, 1988. On that day, the Claimant boarded a work flat with a Signal Foreman. The Claimant was unhappy because there were not enough repairmen on the flat. They had not reached the work area, but, at one point, the Claimant advised the Foreman that he would not remove a stop and bonds unless he received additional assistance. The Foreman ordered him to perform the work when they arrived at the site or risk disciplinary charges of insubordination. The Claimant told him he had no intention of doing the work and if the Foreman wanted to bring him up on charges for refusing, so be it. He became verbally abusive toward the Foreman. When they got the next stop the Foreman reported the incident to the Trainmaster who sent an Operations Examiner to determine what was happening.

Claimant denied he was insubordinate. During the discussion, the Foreman told the Operations Examiner that he believed the Claimant was under the influence, unable to perform his duties and was insubordinate. He then told the Claimant he was taking him out of service and asked him to accompany him to Christ Hospital for a drug/alcohol test. He further informed the Claimant that if he refused he would receive a nine-month suspension. The Claimant said he would rather be suspended.

The Organization argues that the Carrier failed to meet its burden of proof in this case. There was insufficient evidence the Claimant was under the influence. Furthermore, he never reached the job site. Therefore, there is no way he could have refused to perform his assignment.

Discipline is supposed to be corrective. It is issued to educate and guide the employee. Discharge is reserved for those cases where the employee is guilty of repeated violations and has indicated an unwillingness to change. The Claimant's termination was too severe for someone with a clean record.

Additionally, the Organization asks the Board to consider the circumstances under which the Claimant refused to submit to the drug and alcohol test. He was told his refusal would result in a nine month suspension. He believed that to be the maximum suspension he would receive. Regardless, his refusal to submit to the test did not prove he was intoxicated.

The Carrier counters that the Claimant refused a direct order to perform work and subsequently refused to submit to a drug and alcohol test. The Carrier further contends the Claimant's prior disciplinary record substantiates the discipline issued here.

The Organization raises a valid point concerning the Carrier's attempt to introduce the Claimant's prior disciplinary record before the Board. They had every opportunity to raise the issue during the on-property handling of this case and for whatever reason chose not to do so. In many cases, that would have impacted on the Board's determination. However, the Board upon reviewing the merits of this case, while ignoring the Claimant's prior employment record, finds little reason to overturn the actions of the Carrier. The

Claimant was guilty of two offenses which often result in immediate termination. First, the evidence shows he was clearly guilty of insubordination. There was no reason for him to challenge the directives of his Supervisor. If he believed the Supervisor was violating his rights under the Agreement, he should have followed instructions and then filed a Claim.

The Employee has worked in this industry long enough to have seen the days of turning a blind eye toward alcohol to the current days of nearly zero tolerance. He, as well as, other employees, are aware they risk their jobs if they report to work under the influence of alcohol or other drugs. The argument that he chose not to take the test because he believed he would only receive a nine month suspension is not persuasive. The Claimant had every right not to take the test, but he refused at his own peril.

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 7th day of May 1992.