

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30902  
Docket No. MS-31841  
95-3-94-3-155

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

(Juan Ayala  
PARTIES TO DISPUTE: (  
(Ventura County Railway Company

STATEMENT OF CLAIM:

"Claim of Maintenance of Way worker, Juan Ayala for reinstatement to the service of the railroad and for compensation for back wages since date of wrongful termination on September 20, 1993."

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 employee 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.

On September 20, 1993, Claimant was suspended from service after being arrested on Carrier's property for drunkenness, brandishing a weapon and firing a weapon.

On September 27, 1993, the suspension was converted to dismissal, due to the seriousness of the offense and Claimant's past record.

Claimant argues that it was his brother who was drunk and who fired the gun, nevertheless there is strong evidence that Claimant was in possession of intoxicating beverages, was under the influence of alcohol, did conceal the hand gun and clearly resisted arrest, all on Carrier's property.

Even though certain charges were not pursued by the District Attorney, the charge of resisting arrest was progressed. Claimant pleaded nolo contendere and was sentenced to 36 months probation, a 15 day jail sentence, which was converted to a work release program, and was assessed a fine.

Carrier's decision to dismiss Claimant will not be disturbed. The findings of being under the influence, coupled with his past record warrants dismissal.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of June 1995.