

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31114
Docket No. SG-31526
95-3-93-3-542

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
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(Chicago & North Western Transportation
(Company

STATEMENT OF CLAIM: "Claim on behalf of General Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company (CNW).

"Claim on behalf of J. B. Bunger for reinstatement to service with payment for all lost time and benefits and with seniority unimpaired and the record of discipline removed from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 51, when it failed to provide the Claimant with a fair and impartial hearing on charges of safety violations and then imposed the harsh and excessive discipline of dismissal from service. Carrier's File No. 79-92-56. General Chairman's File No. S-AV-96A, BRS File Case No. 9079-CNW."

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.

The Claimant was assigned to the position of Signalman on the Beverly Signal Crew at Cedar Rapids, Iowa, which was engaged in the movement of signal cable in order to permit the installation of an air conditioning unit at the Fairfax Interlocking Bungalow near

Fairfax, Iowa. On the morning of May 18, 1992, while inspecting the work of the Signal Crew, Signal Supervisor Carlson, noticed that graffiti had been scrawled on the insulation panel of the back door of the bungalow. The Supervisor tried to ascertain who was responsible, but was unsuccessful. He advised the crew that such actions were unacceptable and left the job site.

When the Supervisor returned to the bungalow nine days later he saw additional graffiti carved into the door of the bungalow. He was advised by the Crew Leader and another employee that the Claimant was the individual responsible for the additional graffiti. As a result, the Claimant was notified by charge letter to attend a formal investigation to determine, "(His) responsibility for (his) action when (he) was observed causing damage to the inside of a bungalow, in the vicinity of Fairfax, Iowa." The Hearing which was postponed once, was held on June 12, 1992. Subsequent to reviewing the evidence adduced at Hearing, the Carrier terminated the Claimant from service.

The Organization appealed the dismissal. As part of its argument, the Organization contended the Hearing was held outside the required time limits since the graffiti was first discovered on May 18 and the Hearing was not scheduled until June 7, 1992. Furthermore, it claimed testimony was offered at the Hearing which compromised the fairness of the proceedings. In addition, the Organization contends the charge against the Claimant was vague and in violation of Rule 51. Besides, it insists the Claimant was no longer an employee at the time of the Investigation and therefore was not subject to discipline. Finally, the Organization contends that even if the Claimant was properly found guilty of the charges and was subject to discipline, discharge was too harsh a penalty for the Rule infraction.

The Carrier denied the Organization's appeals. It held that the charges were specific and valid. It argues that the Hearing was held within ten days of the Carrier receiving verification from a second employee that the Claimant had been responsible for the graffiti. Furthermore, the Carrier argues that the charges against the Claimant were proven. The Claimant is not entitled to reinstatement or compensation for time lost.

The Board upon reviewing the evidence presented at Hearing finds sufficient reason to uphold the actions of the Carrier. The Claimant was given adequate forewarning of the consequences of his actions. Even though he may have been having personal difficulties, he had opportunity to seek help and only did so after he was dismissed. Reinstatement is simply not appropriate.

AWARD

Claim denied.

ORDER

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 1st day of September 1995.