

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32728
Docket No. SG-33536
98-3-96-3-1103**

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

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

**(CSX Transportation, Inc. (former Baltimore &
(Ohio Railroad Company)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):

Claim on behalf of T.C. Jackson for reinstatement to service with his seniority unimpaired, account Carrier violated the current Signalmen's Agreement, particularly Rule 50, when it failed to provide the Claimant with a fair and impartial investigation and imposed the harsh and excessive discipline of dismissal in connection with an investigation conducted on January 23, 1996. Carrier's File No. 15(96-67). BRS File Case No. 9998-B&O.”

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 were given due notice of hearing thereon.

This Docket involves the dismissal of Signal Maintainer T. C. Jackson for conduct unbecoming an employee of Carrier for the possession and discharging of a firearm while in a Carrier truck on Carrier's right-of-way near Mt. Airy, Maryland, on December 8, 1995.

The specific charges are set forth in Carrier's notice of January 2, instructing Claimant to attend a formal Investigation on January 10, 1996:

"... to determine the facts and place your responsibility, if any, in connection with the possession and discharging of a firearm while in a company vehicle and also while on CSXT right-of-way on December 8, 1995.

You are charged with violation of Operating Rules 501, 501-A part 4 and conduct unbecoming a CSX employee in connection with the above cited incident. You may have present, representation as provided in your current working agreement, and you may arrange to have present witnesses who have knowledge of the matter under investigation."

The Investigation was rescheduled and held on January 23, 1996. By letter dated January 30, Claimant was advised that evidence adduced at the Investigation proved him guilty of the charges, and his employment was terminated as of January 30, 1996.

Claim was filed on February 28, 1996, appealing Claimant's dismissal on the grounds that the discipline administered was excessive in light of his almost 22 spotless years of service. It was denied March 26, and conferenced on June 5, 1996, but the parties were unable to reach satisfactory disposition of the claim. It is now properly before the Board for final adjudication.

Review of the Investigation transcript reveals that not only did Carrier adduce substantial credible evidence to prove the charges, but that Claimant freely acknowledged his guilt of all charges.

The Organization's position that Carrier failed to afford Claimant a fair and impartial Investigation as provided for in Rule 50 of the Agreement is negated by Claimant's admission of guilt.

The Organization's argument that dismissal from service is excessive in light of Claimant's 22 years of spotless service is not sustainable. This is so because years of service with a clean record cannot serve to mitigate serious improper conduct. Claimant's conduct in this case was not only improper, it was, to use his terminology, "stupid" to come on duty with a concealed firearm in his possession and proceed to fire it at several locations on company property and from a company vehicle some 30 or more times.

Claimant's conduct presented a potential hazard to himself, other employees and the general public. Carrier cannot be expected to return an employee to its service who is subject to such irrational conduct. To do so would be an open invitation to potential liability in the future.

In Third Division Award 21323, involving dismissal of a long service employee, the Board held:

"On many occasions this Board has held that years of service alone does not mitigate improper conduct by employees and this case is no exception. While we are reluctant to sustain the ultimate penalty of dismissal for long service employees, it cannot be said that the decision of Carrier in this case was arbitrary or capricious; the Carrier possesses considerable latitude in the imposition of discipline and under the circumstances herein we are not inclined to substitute our judgment for that of Carrier."

In Third Division Award 25016 involving possession of a firearm on company property, the Board stated:

". . . A number of awards upholding the dismissal of employees for being in the possession of firearms, while on Company property, have been issued by this Division. We find that in the instant case, there is no proper basis to interfere with the discipline assessed by the Carrier and the claim is denied."

In the instant case, Claimant acknowledged not only possession but also discharge of a firearm on company property. On the basis of this record, we find no justification to interfere with Carrier's assessment of dismissal from service. It was not excessive.

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 19th day of August 1998.