

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42337
Docket No. MS-42750
16-3-NRAB-00003-140176**

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

PARTIES TO DISPUTE: (Louis R. Berger
(New Jersey Transit Rail Operations

STATEMENT OF CLAIM:

“Due to New Jersey Transit Policies 2.02 and 3.25, I was dismissed of all service March 26, 2013 from the occurrence on August 31 and September 1, 2012. File NO. 12-09-4495 O/S. On September 2, 2013, Mr. Mark J. Schappaugh and Mr. Sean D. Gerie of the Brotherhood of Maintenance of Way Employees Division recommendation that they close my file on this case and immediately inform the claimant of their decision to do so.

On January 15, 2014 I had a conversation with Mr. Steve M. Drayzen, Manager of Labor Relations, NJ Transit. Mr. Drayzen instructed me to file for a hearing with the Arbitrator of the National Railroad Adjustment Board. Mr. Drayzen expressed my right for a hearing with the Arbitration Board without representation by the Brotherhood of Maintenance of Way [Employees].

Please consider this as my formal request to be heard by The National Railroad Adjustment Board at NJ Transit.”

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.

The facts in this case are not in dispute. Following a Hearing and Investigation, the Petitioner was dismissed by the Carrier effective April 10, 2013 for unauthorized use of a company vehicle, operating it under the influence of alcohol while transporting a non-employee passenger, damaging the vehicle and making a false statement to his Supervisor about the incident. At the Hearing and Investigation, the Petitioner offered the following testimony:

“Well, on the 31st of August, I had a friend in Hoboken that needed a ride, so I picked her up and I brought her where she needed to go and after dealing with her, I did have myself a few drinks and went on with the night drinking and got picked up later by somebody else and we went out and came back and continued running around and took the truck out. And that’s a basic summary of what the night . . . and when I hit the truck . . .

When I hit the truck, I hit it in Jersey City, I hit it on the concrete pillar and I brought it back to the shop and I tried using a sledgehammer to bang the truck back in place, which didn’t work at all, and I ended up going into the shop and in the morning walking into Sonny Gotay in the morning and in talking to him I didn’t admit to hitting the truck on anything, I just . . . I played clueless. I acted like I had no idea what was going on and he ended up sending me home and when I came back, the 7th I believe Danny Smith said, I did admit to what I did to the truck.”

On the basis of the Petitioner’s own admission, the Board finds that the Carrier had substantial evidence to support its charges against him. In light of the seriousness of his offense, coupled with the fact that he had less than three years of service at the time of this incident, we cannot find that the discipline imposed was either arbitrary or excessive. While it is commendable that he has undertaken efforts toward substance abuse rehabilitation, the Petitioner’s claim is essentially a plea for leniency, which is solely the prerogative of the Carrier. Accordingly, his claim before the Board must be denied.

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 28th day of July 2016.