

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5244

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)	
and)	Case No. 9
)	
NORTHEAST ILLINOIS REGIONAL COMMUTER)	Award No. 1
RAILROAD CORPORATION (A PUBLIC CORPORATION))	
)	

Martin H. Malin, Chairman & Neutral Member
M.J. Schappaugh, Organization Member
J.S. Morse, Carrier Member

Hearing Date: August 26, 1992

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The dismissal of Trackman E. J. Henderson for alleged violation of "Second paragraph of Rule N; and first and third paragraphs of Rule Q, in the Metra Employee Conduct Rules," was without just and sufficient cause and on the basis of unproven charges (Carrier's File 08-13-121).
2. The Claimant shall be reinstated to service with seniority and all other rights unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage losses suffered.

FINDINGS:

Public Law Board No. 5244, upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On April 29, 1991, Claimant was notified of a formal hearing to develop the facts relating to an incident which occurred on April 26. The notice charged Claimant with violating Rules N and Q, based on:

your arrest for alleged carrying of concealed weapons and ammunition . . . as well as, your alleged failure to protect your assignment on Friday afternoon, April 26, 1991.

The hearing was held on May 20, 1991. On June 6, 1991, Claimant was advised that he was found to have violated Rules N and Q, and was dismissed.

On April 26, 1991, around 12 Noon, Claimant received permission to leave the property to purchase lunch. Claimant testified that while walking to the store where he was going to purchase lunch, he found a firearm in a bag, picked the firearm up intending to turn it over to police, placed it in his pocket and entered the store. While in the store, Claimant was arrested and charged with carrying a concealed weapon.

Claimant did not return to his job. Around 2:30 P.M., Claimant telephoned Carrier and a Richton Park police officer advised a foreman that Claimant was in custody. At Claimant's request, the foreman bailed him out at the end of his work day.

Claimant contends that the evidence produced at the hearing does not support the dismissal. Claimant maintains that Carrier failed to prove violations of Rules N and Q because Carrier never introduced the text of these rules during the investigation. Claimant observes that before this Board, Carrier relies only on the alleged Rule Q violation. In Claimant's view, his dismissal cannot stand because it was premised on alleged violations of both rules and Carrier now concedes that it failed to prove the Rule N violation. Claimant further maintains that Carrier failed to prove the Rule Q violation because Claimant's failure to return to work from lunch was beyond his control and Claimant notified Carrier of the circumstances at the earliest possible time.

Carrier objects that Claimant's argument that is premised on Carrier's failure to introduce the text of Rules N and Q in the investigation was never raised on the property. Carrier further contends that the evidence clearly proved Claimant's violation of Rule Q, as Claimant admitted that he failed to return from lunch without proper authorization. Carrier maintains that Claimant's arrest does not excuse his failure to protect his job. Carrier further contends that even without the Rule N violation

dismissal was warranted, in view of the seriousness of the Rule Q offense and Claimant's prior record.

The Board finds that Carrier proved Claimant's violation of Rule Q. Claimant admitted that he failed to protect his job assignment, when he admitted that he failed to return from lunch without authorization. Claimant's arrest does not excuse his failure to protect his job assignment.

We reject Claimant's contention that the charge was not proven because Carrier failed to read into the investigation transcript the text of Rule Q. Claimant failed to raise this argument on the property. Moreover, Claimant was clearly appraised that he was charged with violating Rule Q by failing to protect his job assignment, Claimant indicated that he was familiar with Carrier's rules, there is no evidence that Claimant was in any way prejudiced by Carrier's failure to read the text of Rule Q during the investigation, and Carrier's roadmaster did testify to Carrier's absenteeism policies. The full text of Rule Q was incorporated into the record during further handling of the claim on the property, and Claimant points to no precedent which requires on this property the formalistic ritual of reading the text of the Rules during the investigation.

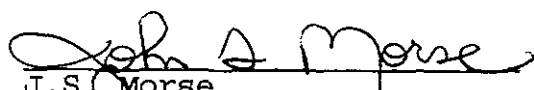
Carrier's original decision to dismiss Claimant cited his prior record and violations of Rules Q and N. Carrier now concedes that it failed to prove a Rule N violation because the evidence did not establish that Claimant possessed the firearm on Carrier's property. We agree with Claimant that his dismissal must be evaluated in light of the only remaining charge - the Rule Q violation. Our review of the Rule Q violation and Claimant's prior record, however, leads us to conclude that Claimant's dismissal must stand.

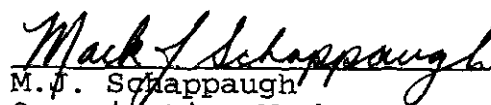
Failure to protect one's job assignment is a serious offense. Although it may not justify dismissal in every case, this was not Claimant's first such offense. His record reveals three prior Rule Q violations since June 1, 1989, each of which was punished with progressively more severe sanctions. Despite a three day deferred suspension in 1989 and a thirty day actual suspension on April 27, 1990, Claimant again violated Rule Q and received a sixty day actual suspension on February 7, 1991. The instant violation occurred just over two months following that suspension. Under these circumstances, efforts to correct Claimant's behavior through progressive discipline failed and dismissal was justified.

AWARD

Claim denied.


Martin H. Malin, Chairman


J.S. Morse
Carrier Member


M.J. Schappaugh
Organization Member

Dated at Chicago, Illinois, November 3, 1992.