

Carrier's File S-42-501-87  
Organization's File T-7235

Award No. 1  
Docket No. 1  
Case No. T-7860

NATIONAL MEDIATION  
BOARD

FEB 10 9 03 PM '75

NATIONAL RAILROAD  
ADJUSTMENT BOARD

PUBLIC LAW BOARD NO. 1391

UNITED TRANSPORTATION UNION (C&T)

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY  
Western Lines - Northern and Southern Divisions

STATEMENT OF CLAIM

Claim in behalf of Trainman A. Clinkscales to be reinstated with seniority and all other rights unimpaired, with pay for all time lost, beginning April 29, 1972.

OPINION OF THE BOARD

Claimant entered service of Carrier on June 11, 1970. His record reveals that on three separate occasions, other than the instant case, he had been assessed 10 demerits during his employment. The record reveals that Claimant was charged by civil authorities with trespassing in the Good Shepherd Hospital in Longview for an incident that occurred on April 20, 1972, at about 3:30 AM. Claimant entered a plea of no contendre and was fined \$200.00 plus court costs in the Corporation Court, which is recorded in Page 10330 at Longview, Texas. Records introduced at the investigation were to the effect that Claimant was found in a certain woman's room in said hospital with her sheet pulled down and her gown pulled up around her head, and that Claimant was present. Carrier held Claimant out of service on April 29, 1972, pending formal investigation, which was held on May 9, 1972. Carrier contends that April 29, 1972, was the first date Carrier had knowledge of this occurrence. As a result of the investigation, Claimant was removed from service for his failure to comply with Rules 752, 752(A), (B), and (E), Rules Operating Department 1966. The Organization contends that Claimant was not afforded a fair and impartial investigation; that his guilt was prejudged; and that Carrier failed to sustain its burden of proof that there was a rule violation. Carrier contends that the investigation was properly conducted; that Carrier had the right to remove Claimant from service pending the investigation and requests a denial award. Carrier, however, requests that in the event any portion of this Claim is sustained, that appropriate credit be taken for any outside earnings paid Claimant to offset loss of earnings during any period of the time sustained by this Board.


This claim will be denied. The record in this dispute is abundantly sufficient to justify every act of Carrier. Continued employment of Claimant would constitute a hazard to both Claimant and his fellow employees. Carrier, under no circumstances, is required to utilize the

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services of an employee whose demeanor reflects a repetitious series of criminal and immoral acts. Carrier sustained its burden of proof in the investigation that Claimant was guilty as charged. Within two years immediately preceding the act complained of herein, this Claimant committed acts of indecent exposure, fraud, assault and battery on a female, and assault and battery on a minor male. See Carrier's Exhibits F, G, H, I and J. Claimant's past record of less than two years showed that he had been disciplined on three occasions by Carrier. The allegation of the Organization that Claimant was prejudged is merely an allegation not supported by the record. The documents requested at the investigation by the Organization were public records that could have been obtained by the Organization prior to the investigation, upon request. There is no evidence in this dispute that Claimant did not receive a fair and impartial hearing at the investigation. It is, therefore, found that the action of Carrier in this instance was not arbitrary or capricious and was entirely justified.

AWARD

Claim denied.

  
Chairman and Neutral Member

  
Carrier Member

  
Organization Member

Fort Worth, Texas  
February 4, 1975