

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25894
Docket Number MW-25857

David P. Twomey, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Burlington Northern Railroad Company
((former Fort Worth and Denver Railway Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Trackman N. E. Gerardo for alleged 'violation of Rule 570 of the Burlington Northern Safety Rules and General Rules in connection with your absence from duty without the proper authority from June 27, 1983 through July 11, 1983' was capricious and arbitrary (System File F-35-83/G-90).

(2) The claimant shall be returned to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The Claimant entered the service of the Carrier on August 24, 1975. At the time the discipline appealed in this case was imposed the Claimant was employed as a trackman in Trinidad, Colorado.

By a letter dated July 11, 1983, Claimant was notified to attend an investigatory hearing. The letter stated in part:

"***

Attend investigation in the Trainmaster's Office, 720 Linden Avenue, Trinidad, Colorado, at 1:00 p.m. on Thursday, July 14, 1983, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged absence from duty without the proper authority from June 27, 1983, through July 11, 1983, inclusive, while assigned as a trackman to Trinidad Section West. ***

/s/F. D. Smith
Asst. Superintendent"

The investigatory hearing was commenced as scheduled on July 14, 1983. The hearing was recessed, however, in order to enable Claimant to obtain representation. The hearing reconvened on July 22, 1983, with the Claimant and his representative present. Subsequently, Claimant was informed that as a result of the facts adduced at the hearing, he was found to be responsible for the rules violations as charged and was assessed the discipline of dismissal, as set forth below:

"Effective this date, you are hereby dismissed from the service of the Burlington Northern Railroad Company for violation of Rule 570 of the Burlington Northern Safety Rules and General Rules in connection with your absence from duty without the proper authority from June 27, 1983, through July 11, 1983, inclusive, when assigned as a trackman to Trinidad Section West. ***

/s/C. L. Brotherton
General Roadmaster"

We find substantial evidence of record to support the Carrier's finding that Claimant violated Rule 570 of the Burlington Northern Safety Rules and General Rules. As a result, we must reject the Organization's contention that the Carrier's dismissal of Claimant was capricious and arbitrary.

The record shows that Burlington Northern Safety Rule 570 is a clear and concise rule governing employee attendance. Rule 570 simply states:

"570. Employees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties with or substitute others in their place without proper authority."

The record includes testimony from Claimant's Supervisor, Mr. F. L. Maldonado. Mr. Maldonado testified at the hearing that Claimant did not report for work from June 27, 1983 through July 11, 1983. According to Mr. Maldonado, these absences were without proper authorization. Mr. Maldonado's testimony was supported by the testimony of the Claimant. He testified that he was absent from work from June 27, 1983 through July 11, 1983 and further, that he did not receive permission from a proper authority to be absent those eleven days. Claimant stated that he was absent from work for this period because he was incarcerated at the Las Animas, Colorado County Jail for driving under the influence of alcohol. On the basis of these facts it appears undisputed that Claimant was absent from work from June 27, 1983 through July 11, 1983. Accordingly, we hold the record contains substantial evidence supporting a determination that Claimant was absent without authority in contravention of Burlington Northern Safety Rule 570.

We further hold that neither the fact that Claimant was incarcerated, nor the fact that he suffers from alcohol dependence forms a basis for setting aside the Carrier's finding, or the discipline imposed upon Claimant. Incarceration is not justification for an employee's absence from service, especially in this case where Claimant was jailed for an offense with which he was all too familiar. (Claimant's record of alcohol related driving and criminal offenses staggers the imagination.) Although the Organization contends that Claimant's criminal behavior and concomitant absences may be attributed to chronic alcoholism, this does not render the dismissal imposed by the Carrier inappropriate. The record reveals extensive attempts by the Carrier to assist Claimant in overcoming his serious alcohol problems, without success.

The Carrier has a right to expect regular attendance from its employes and as the Carrier has set forth in Rule 570, "alert ... (and) ... attentive ... service while on duty". Given Claimant's absences, his record of habitual criminal activity, and his failure to cope with his chronic alcoholism despite the Carrier's remedial efforts, we believe the Carrier's determination that Claimant should be dismissed is supported by substantial evidence of record. Accordingly, the claim is denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

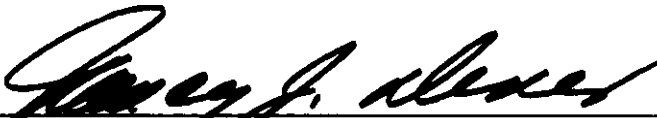
That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1986.