

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That the St. Louis - San Francisco Railway Company unjustly dismissed Machinist Apprentice Frederick P. Schuelzky, Jr. from the service of the Carrier effective January 12, 1976.
2. That accordingly, the St. Louis - San Francisco Railway Company be ordered to compensate Machinist Apprentice Frederick P. Schuelzky, Jr. at the pro rata rate of pay for each work day beginning January 12, 1976 until he is reinstated to service. In addition, he shall receive all benefits accruing to any other employee in active service, including vacation rights and seniority unimpaired.
3. Claim is also made for Machinist Apprentice Frederick P. Schuelzky, Jr.'s actual loss of payment of insurance on his dependents and hospital benefits for himself, and that he be made whole for pension benefits, including Railroad Retirement and Unemployment Insurance.
4. In addition to the money claimed herein, the Carrier shall also pay Machinist Apprentice Frederick P. Schuelzky, Jr. an additional sum of 6% per annum, compounded annually on the anniversary date of said claim, in addition to any other wages earned elsewhere in order that he be made whole.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

Claimant was a machinist apprentice who entered Carrier's service on October 3, 1972. On November 9, 1975 Claimant pled guilty to a charge of selling a controlled substance (cocaine). He was sentenced on December 22, 1975 to five (5) years imprisonment but sentence was suspended by the Court and he was placed on probation for three (3) years under special conditions. The Circuit Court Judge who sentenced Claimant described these conditions thusly:

"Special conditions of the probation were: (1) Defendant to serve nine months in the County Jail and to report to jail by 5:00 P.M., Monday, December 29, 1975; (2) Defendant to participate in work-release program and to be released from jail at 6:30 A.M. each work day and report back by 5:00 P.M. each work day; (3) Defendant to submit to search of his person and immediate area whether at home, in an automobile, or elsewhere at any time by law officer or probation officer; (5) Defendant to avoid association with anyone he knows or suspects is using, possessing or trafficking in drugs; (6) Defendant to continue counseling with June Kelsay of the Department of Mental Health in Springfield."

Subsequent to his sentencing and while he was serving his conditional probation Claimant received from Carrier, the following Notice:

"January 6, 1976
Springfield, Mo.

Frederick P. Schuelzky Jr.
Machinist Apprentice
Diesel Shop
Springfield, Missouri

Mr. Schuelzky;

Please report to my office at 9:00 A.M. January 12, 1976, for formal investigation to develop the facts and determine your responsibility, if any, in connection with your selling a controlled substance on June 9, 1975, allegedly being cocaine, the possession of which is a violation of Rule 'G' of the General Regulations, Rules, Regulations, Safety Rules and Instructions governing Mechanical Department Employees, Form MP-1 Standard effective March 1, 1957, reading as follows: 'The use or possession of intoxicants or narcotics is prohibited.'

"You are also charged with reporting for work late on November 3, 25, 26, and December 11, 1975, which is a violation of the pertinent portion of Rule 'C' Form MP-1 Standard, reading in part as follows: 'Employees must be alert, devote themselves exclusively to the service, give their undivided attention to their duties during prescribed hours. ...' Your work record for the period June 1, 1975 through December 31, 1975 and your personal record will be reviewed at this investigation.

"You may have representative as specified by agreement rules. The duly authorized representative of your craft receives a copy of this notice.

/s/ R. H. Stracké
Supt. Locomotive Shop

cc: Mr. C. E. Haymes"

A formal hearing and investigation was held and review of the transcript shows that Claimant admitted all charges contained in the Notice of Hearing and requested leniency and a second chance. No meaningful procedural objections were raised at the investigation by Claimant nor by his Local Chairman, who represented him. Following the investigation Carrier notified Claimant that he was discharged from service.

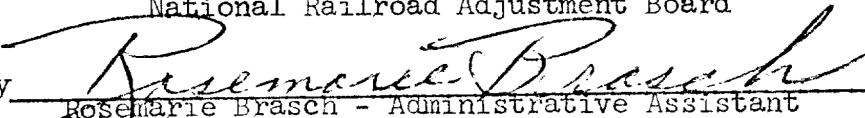
The case comes to us solely on the issue of appropriateness of the penalty. There is no factual question cognizable by us because Claimant admitted guilt as charged and no procedural due process question is before us because none was raised. On the transcript, both the sentencing Judge and the Alcohol and Drug Counselor recommended continuation of Claimant's employment, i.e., leniency by Carrier. Carrier declined to exercise leniency and terminated Claimant. Whether we would have given Claimant a second chance is not pertinent because we are confined to reviewing Carrier's decision and may not set it aside unless it was arbitrary, unreasonable or discriminatory. On the record before us, we can make no such finding and, accordingly, we must deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 12th day of July, 1978.