

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

Parties to Dispute: ( System Federation No. 162, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company (Texas and Louisiana Lines) violated the controlling agreement, particularly Rule 3<sup>4</sup>, when they unjustly withheld Carman Apprentice Jesse Esparza from service beginning December 30, 1977, and dismissed him from service effective March 9, 1978.
2. That accordingly, the Southern Pacific Transportation Company (Texas and Louisiana Lines) be ordered to reinstate Carman Apprentice Esparza to service with seniority rights unimpaired and compensate him for all time lost since held out of service pending investigation beginning December 30, 1977, until reinstated.

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, a carman apprentice at carrier's Houston, Texas, facility, was suspended from service on December 30, 1977, and discharged from service on March 9, 1978. He was charged by carrier with a violation of Rule G (possession and use of a narcotic, marijuana). Prior to an investigation into the charge by carrier, claimant was arrested; his case was presented to the Harris County Grand Jury. The Grand Jury returned a no-bill on the case and civil charges were dropped. Carrier, however, proceeded with its investigation and subsequently discharged claimant.

The organization contends that claimant should not be tried a second time for the same offense. He was not indicted by the civil authorities; therefore, he should not again be tried for the same offense by his employer. Claimant further contends that carrier is discriminating against him because he is a member of a minority group.

The organization presents three propositions as defense in this case.

1. Claimant denied having marijuana in his possession.
2. He was not indicted in civil court on the same charges he is being tried for by the carrier.
3. The hearing officer in the instant case was an investigator, prosecutor, trial judge, and appellate judge. Consequently, claimant did not receive a fair and impartial hearing, as required by Rule 34 of the collective bargaining agreement.

This Board will address each of these propositions separately. The organization contends that Claimant did not receive a fair trial because the individual who filed the charges was the same individual who held the hearing and assessed the penalty. This issue has been addressed in numerous awards by all divisions of this Board. It has generally held that a full and fair hearing is not denied per se just because the same person performed multiple roles throughout the grievance procedure. The record of each case must be judged by this Board before a decision can be made that due process was denied by carrier. The mere fact that multiple roles were assumed by one person does not automatically result in a finding that due process was denied. From the record before us, we see no validity in the organization's argument on this point.

The organization also contends that claimant was subjected to double jeopardy because he first appeared before civil authorities and was then tried by the carrier for the same offense.

Here, too, the Board cannot support the organization's position. It is well settled in the railroad industry, as well as in most other employee-employer relationships, that criminal proceedings and discipline proceedings under collective bargaining agreements are not dependent upon each other. This Board in numerous cases has so stated. The reasons for such a holding have often been enunciated in these awards and need not be repeated here. (See Fourth Division Award 3093; Third Division Award 12322 and Third Division Award 13116 as examples.)

Finally, the organization raised a question about the merits of the case. From the record before us, this Board can only conclude that claimant was in possession of marijuana on company property. The facts are clear on this point. Carrier was informed by an anonymous caller that a drug sale was to take place on its property. Special investigators proceeded to the location, observed claimant talking to another person, approached him, found marijuana in his car, and had him arrested. Carrier has ample justification to conclude that the marijuana found in claimant's car belonged to him. Possession of this drug is a dischargeable offense under Rule G.

The record of this case is devoid of any evidence that carrier was engaged in a conspiracy to "get" claimant or that claimant was treated differently than any other employees would have been treated had they been found in possession of marijuana on company property.

Carrier acted properly in this case. Claimant was given a fair hearing. The record supports carrier's contention that claimant possessed marijuana on company property. No evidence of discrimination on any grounds exists in the record.

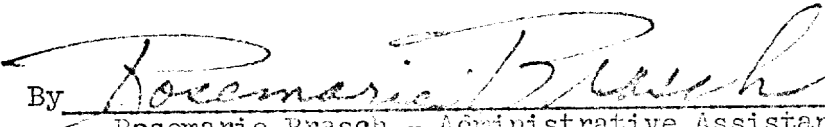
A W A R D

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 24th day of October, 1979.