

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (System Federation No. 16, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk & Western Railway Company violated the Controlling Agreement of September 1, 1949, as subsequently amended, when on August 9, 1977, Apprentice Carman J. K. Ayers was given a formal investigation resulting in unreasonable and capricious assessment of Dismissal effective August 24, 1977.
2. That the investigation was improperly arrived at and represents unjust treatment within the meaning of Rule No. 37 of the Controlling Agreement.
3. That because of such violation and capricious action, the Norfolk & Western Railway Company be ordered to reinstate Apprentice Carman J. K. Ayers to service when the other employees below Mr. Ayers on the seniority roster are recalled from furlough. To reinstate J. K. Ayers to service with seniority rights, vacation rights and all other benefits that are a condition of employment unimpaired, with compensation for all lost time plus 6% annual interest. To reimburse J. K. Ayers for all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service.

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 employees 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.

An investigative hearing was held on August 9, 1977 pursuant to Agreement Rule 37 to determine Claimant's responsibility in violating company regulations governing the conduct of its employees, when he was convicted of a felony in the Circuit Court for the County of Roanoke for distributing a controlled substance. Claimant was subsequently found guilty of violating the company regulation which was issued as an operations bulletin on June 19, 1974 and dismissed from service effective August 24, 1977. This regulation reads: "The conduct of any employee leading to conviction of any misdemeanor involving moral turpitude (including without limitation,

the unlawful use, possession, transportation or distribution of narcotics or dangerous drugs) or of any felony is prohibited." This disposition was appealed on the property and is presently before us for adjudicated review.

In reviewing this case, this Board takes judicial notice of our recent Award 8205 involving the SMW organization and the same Carrier vis. the dismissal of another employee on analagous charges. We held in that Award that, "the record of the investigation supports the Carrier's finding that the Claimant had indeed been convicted of a felony which was a breach of the regulations. The crime for which Claimant was convicted was serious. The penalty of dismissal is well within the bounds of reason for cases such as this. The Carrier is not required to deal lightly with employees who engage in felonious drug dealing."

Based on the record before us we find no mitigative rationale that would warrant a variant penalty. Claimant's deportment was plainly inimical to the best interests of his fellow employees and palpably detrimental to the safety and welfare of Carrier's operations. Our ruling in Award 8205 applies with equal fervor here and we will deny the claim.

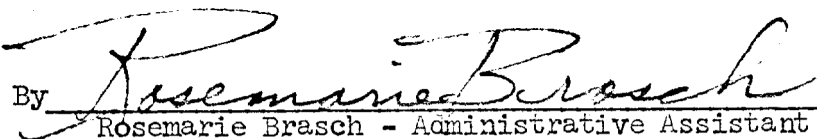
A W A R D

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 16th day of January 1980.