

The Second Division consisted of the regular members and in addition Referee Edward M. Hogan when award was rendered.

(Int'l. Brotherhood of Firemen and Oilers  
( System Council No. 44  
Parties to Dispute: ( AFL-CIO  
(  
(Louisville and Nashville Railroad Co.

Dispute: Claim of Employees:

1. That under the current and controlling agreement, Service Attendant D. L. Duncan, Jr., I.D. No. 261835, was unjustly dismissed from service of the Louisville and Nashville Railroad Company on April 2, 1981, after a formal hearing was held on March 6, 1981.
2. That accordingly, Service Attendant D. L. Duncan, Jr. be restored to service, to his regular assignment at L&N South Louisville Shops, Louisville, Kentucky, compensated for all lost time, vacation, health and welfare, hospital, life insurance and dental insurance premiums be paid effective April 2, 1981. Also, the payment of 6% interest rate be added thereto.

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 dismissed from the service of the Carrier on April 2, 1981, after a formal investigation held on March 6, 1981, on the charges of conduct unbecoming an employee in that Claimant had been found guilty of the charge of possession of drugs (i.e., marijuana).

The Organization contends that the Claimant did not receive a fair and impartial hearing insofar as Claimant had entered a guilty plea for possession of marijuana, an event that took place on Claimant's own time. The Organization further contends that the Carrier's action was arbitrary and capricious.

It is the position of the Carrier that the Claimant received a fair and impartial investigation in strict accord with the applicable discipline rule of the controlling agreement. Further, the Carrier argues that the offense for which the Claimant was convicted in court is conduct unbecoming an employee of the Carrier, and lastly, that his dismissal from the Carrier's service was entirely justified.

We cannot agree with the contention of the Organization that the hearing was unfair or partial. We further find that the Claimant was afforded all procedural and substantive rights granted and provided for in the controlling agreement. With respect to the Organization's contention that the action taken by the Carrier in dismissing the Claimant from its service was arbitrary and capricious, we cannot agree. The Organization and the Claimant do not deny, and in fact admit, that the Claimant had pleaded guilty to the charge of possession of marijuana before the Jefferson County District Court on January 16, 1981, and was convicted for possession of drugs and was fined \$100.00. This, and other Divisions of the Adjustment Board, have long held, and we concur, that certain off-duty conduct is no bar to the assessment of discipline by the Carrier. See Second Division Awards 7831 and 7972. See also Third Division Awards 21228, 21825 and 21949. While there are some situations and fact patterns for which we might not concur that off-duty, "mis-conduct" is no bar to the assessment (i.e., "mis-conduct" involving Constitutionally protected rights), we do not find that to be present in the case before us.

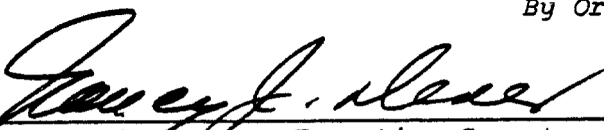
Lastly, in this particular case, we do not find that the assessment and measure of discipline to be unduly harsh. While on one hand, there can be no doubt that dismissal from the service of the Carrier is the ultimate penalty that may be assessed against an employee, this Division, as other Divisions of this Board, have consistently held that it will not interfere with the Carrier's measure and imposition of discipline absent evidence of arbitrary or capricious behavior on the part of the hearing officer, abuse of managerial discretion, or assessment of penalty that clearly does not relate to the charges and findings of the hearing officer. We find no such circumstances here. (We also take cognizance of the fact that the Claimant had been employed by the Carrier little more than one year.)

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of February, 1984