

The Second Division consisted of the regular members and in addition Referee Jonathan Klein when award was rendered.

(Sheet Metal Workers' International Association
(United States District Council of Railroads
Parties to Dispute: (
(Norfolk and Western Railway Company

Dispute: Claim of Employes:

1. That under the terms of the controlling agreement, Water Service Mechanic, E. L. Harrison was informed that as a result of investigation held on May 6, 1982, he was dismissed from all services with the Norfolk and Western Railway Company as of June 4, 1982.

2. That accordingly, the Norfolk and Western Railway Company be ordered to reinstate Water Service Mechanic, E. L. Harrison and remove all references to this investigation from the Claimant's record, that he be paid in the amount of eight (8) hours at the pro rata rate for each day of his work week assignment beginning on the actual day of suspension as of the date of June 4, 1982 with 6% annual interest. Also, that he be restored to service with all rights unimpaired, health and welfare benefits restored including all seniority and vacation rights as if he had continued in the service of the Norfolk and Western Railway Company from the above date.

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 employes 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.

The record of the investigation properly held by Carrier supports the Carrier's finding that Claimant had been sentenced to three (3) years probation, twelve (12) weekends in the Seneca County Jail, and drug and family counseling on a charge of violating Ohio Rev. Code §2925.03(A) (4) and (E) (1), trafficking in marijuana. The record suggests that the sentence Claimant received was the result of a guilty plea, and the violation was a fourth-degree felony. As a result of the investigation on May 6, 1982, Claimant was dismissed from all service with Carrier on June 4, 1982.

The Organization has urged that this Board consider Claimant's dismissal to be a violation of Rules 28 and 29 of the controlling agreement in that the charge was improper, and the facts and evidence did not justify dismissal. The Organization's position is defective both procedurally, and on the merits of the claim.

In response to the dismissal letter of June 4, 1982 the Organization, in seeking reinstatement, back pay, restoration of seniority, etc., contended that the dismissal violated the provisions of the current agreement. No specific rule or provision was referenced by the Organization as violated. The Carrier's response on September 24, 1982 stressed the failure to cite a rule of the current agreement and declined the request for leniency. The Organization's response on October 25, 1982 emphasized its position that the rules Claimant was charged with violating need not result in dismissal, but no rule was cited as the basis for appeal.

On November 4, 1982 referencing for the first time Rule 33 and the current agreement the Organization again sought leniency, stating:

"An unbiased examination of the hearing record reveals that it contains nothing of so serious a nature as to warrant discipline so unjust and severe as assessed. The claimant committed no offense, deed or act unbiased and reasonable consideration would justify the dismissal from service."

The Carrier maintains that the Organization's claim was too vague and ambiguous to be decided on its merits. The Organization again cited Rule 33 in its responses of January 4, 1983 and April 7, 1983 that the claim was proper. Not until its April 16, 1983 letter does the Organization assert that its reference to Rule 33 through the appeal process was inadvertent and that it should have been Rule 28 and 29. Carrier rejected the claim at this juncture positing inter alia, that the claim was improperly amended in process.

The substance of the Organization's position as this claim was handled on the property was one of leniency, but that is not the basis of this appeal. As stated in Third Division Award No. 19564:

"The contentions of Carrier in this dispute are well taken. The only claim handled on the property concerned itself with a request for leniency; the appeal to this Board concerns itself with a full reinstatement of Claimant with back pay based on contentions which were not handled on the property.

The awards of this Board are numerous and consistent in upholding the basis and fundamental principle that if the claim as submitted to this Board does not encompass the claim handled on the property, then such claim should be dismissed." [See, also, Second Division Awards No. 5783; 6740; and 6466.]

Assuming arguendo that there was neither a substantial variance between the claim as it ultimately progressed on the property and as it presently stands before this Board, the claim is still without merit.

The Carrier's General Notice "C" and Rules of General Conduct 1714 are as follows:

"C. To enter or remain in the service is an assurance of willingness to obey the rules.

1714. The conduct of any employee leading to conviction of any felony, or of any misdemeanor involving the unlawful use, possession, transportation, or distribution of narcotics or dangerous drugs, or of any misdemeanor involving moral turpitude is prohibited."

In Second Division Award 8205, it was stated 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.

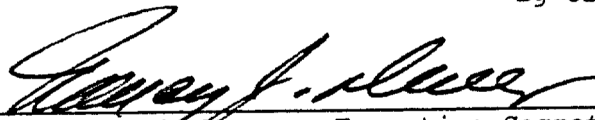
Carrier's charge of violation of the rule by Claimant's conviction was clearly proven. While a policy of drug treatment not unlike that used in instances of alcohol abuse may ultimately prove more beneficial for both the Carrier and similarly-situated Claimants, dismissal of the Claimant was within the rights of the Carrier. Third Division Award 22383; Public Law Board No. 2021, Award No. 21.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:



Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1984.