

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

(Sheet Metal Workers' International Association
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

1. That in violation of the governing Agreement, the Southern Pacific Transportation Company did arbitrarily and capriciously remove from service and later dismiss Sheet Metal Worker Ron M. Williams following an investigation held on January 6, 1987.

2. That further in violation of the Agreement, Sheet Metal Worker Ron M. Williams was not afforded a fair and impartial hearing as required by Rule 39 of the Agreement controlling here.

3. That accordingly, the Southern Pacific Transportation Company should be directed to compensate Mr. Williams for all time lost at the pro-rata that he was improperly withheld from service.

That Claimant be made whole for any and all rights, benefits or privileges which would have accrued to him had it not been for the discipline assessed and further that all references to the discipline be stricken from his personal record.

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 shows that Claimant, employed by the Carrier as a Sheet Metal Worker, was found asleep while on duty on August 18, 1986. At that time, he stated that he was on medication that affected his reaction. On the following workday, Claimant, with a starting time of 4:00 P.M., reported at about 5:20 P.M. that he was ill.

Claimant was subsequently notified to report to a Carrier designated doctor for a physical examination. On November 4, 1986, Claimant reported to

the company doctor but refused to give a urine specimen. He was again in the Carrier doctor's office on November 17, 1986, but did not supply a urine specimen.

On November 19, 1986, a urine specimen was furnished to the Carrier doctor. The Carrier states, as it did in the on-property handling, that the specimen furnished on November 19, 1986, was submitted to two laboratories, and the results of both showed that Claimant tested positive for cocaine. On December 12, 1986, Claimant was notified by Carrier's Plant Manager to report for a formal hearing on December 18, 1986:

"...to develop the facts and place responsibility, if any in connection with your alleged use of cocaine as indicated by the results of your urine test taken on November 19, 1986.

You are hereby charged with responsibility which may involve violation of Rule G of the General Rules and Regulations of the Southern Pacific Transportation Company, that part reading:

Rule G: 'The illegal use...while on or off duty of a drug, narcotic, or other substance which affects alertness, coordination, reaction, response or safety, is prohibited.'

You are entitled to representation in accordance with agreement provision and may bring to such hearing those witnesses you may desire."

The formal hearing was postponed and conducted on January 6, 1987. A copy of the transcript has been made a part of the record. Claimant was present at the hearing and was represented. The laboratory report on the specimen submitted to the Carrier doctor on November 19, 1986, was made a part of the hearing, and indicated positive for cocaine. In the hearing, Claimant presented a laboratory report from another laboratory, made at his request on November 19, 1986, which report indicated negative.

Carrier's Rule G was quoted in pertinent part in the notice to Claimant dated December 12, 1986. On February 3, 1987, Claimant was notified by Carrier's Plant Manager of his dismissal from service as the evidence in the hearing conducted on January 6, 1987, established a violation of Rule G.

We find no proper reason for the Carrier not to rely on the laboratory reports resulting from the urine specimen furnished to Carrier's doctor on November 19, 1986, notwithstanding a contrary report furnished by Claimant from another laboratory.

We will not disturb the discipline of dismissal imposed by the Carrier on February 3, 1987.

In the handling of the dispute on the property, the Carrier advised the Organization on July 8, 1987:

"On April 1, 1987, it was agreed that since claimant had completed a program through the Employee Assistance Program, he would be given the opportunity to return to service on a leniency basis. However, the results of a urinalysis performed on April 6, 1987, showed positive for marijuana and said offer was rescinded."

The Organization denied any agreement concerning a leniency reinstatement. It is not necessary, or proper, for this Board to pass upon reinstatement following completion of a program through the Employee Assistance Program. No rule is cited requiring the reinstatement of such persons and the Board has generally held that such issues may only properly be left to the parties involved. (Second Division Award 11188, and Third Division Awards 25553, 24511.)

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 11th day of January 1989.