

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 12955  
Docket No. 12752  
95-2-93-2-86

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

(International Brotherhood of Electrical  
( Workers  
PARTIES TO DISPUTE: (  
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

- "1. That the Union Pacific Railroad Company (Texas & Pacific) violated the controlling agreement, particularly Rules 23 and 24, when they unjustly and arbitrarily withheld Electrician D. K. Warren from service beginning April 7, 1992, following investigation held April 27, 1992, and was dismissed from Carrier's service May 6, 1992.
2. Accordingly, the Union Pacific Railroad Company (Texas & Pacific) be ordered to compensate Electrician Warren as follows:
  - (a) Compensate him for all wages lost, at the prevailing rate of pay of electricians and all applicable overtime;
  - (b) Return him to the service of the Carrier with all seniority rights unimpaired;
  - (c) Make him whole for all vacation rights;
  - (d) Make him whole for all health and welfare and insurance benefits;
  - (e) Make him whole for any and all other benefits including Railroad Retirement and Unemployment Insurance;
  - (f) Make him whole for any and all other benefits that he would have earned during the time withheld from service;
  - (g) Any record of this arbitrary and unjust disciplinary action be expunged 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 employee or employees involved in this dispute are respectively carrier and employee 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 with 13 years of service at the Carrier's Fort Worth Diesel facility was removed from service on April 7, 1992 pending a formal Investigation. On April 9, 1992 he was instructed to attend an Investigation on April 22, 1992 to determine the facts to the following charges:

- "(1) Failure to attend to your assigned duties and engaging in immoral and negligent conduct while on duty, on company property, or engaging in immoral and negligent conduct while on company property, when you arranged for, offered, and/or discussed the delivery of a controlled substance to a fellow employee on the following dates:

09-10-91, 11:30 p.m.  
09-12-91, 11:30 p.m.  
01-23-92, 05:30 p.m.  
01-29-92, 07:30 p.m.  
02-06-92, 09:50 p.m.

- (2) Failure to attend to your assigned duties and engaging in immoral and negligent conduct while on duty, on company property, or engaging in immoral and negligent conduct while on company property, when you dispensed and/or distributed same to a fellow employee on the following date:

09-13-91, 11:30 p.m.

- (3) Possession and dispensation and/or distribution of a controlled substance to a fellow employee on the following dates at the identified locations:

01-30-92, 11:45 p.m., New Orleans Nights,  
Fort Worth, Texas.

02-13-92, 02:51 p.m., Chili's parking lot,  
University Drive,  
Fort Worth, Texas.

- (4) Use of alcoholic beverages subject to duty on the following date:

07-26-91

- (5) Dishonesty in reporting off work, allegedly account dentist appointment on the following date:

08-09-91

- (6) Conduct unbecoming an employee in connection with your arrest while on duty, on company property, on Tuesday, April 7, 1992, by the Tarrant County Narcotics Coordination Intelligence Division charged with the following criminal charges:

A. Misdemeanor Delivery of Marijuana under 1/4 ounce (2 counts).

B. Felony Delivery of Marijuana over 1/4 ounce (1 count)."

After one postponement the Investigation was held on April 27, 1992. As a result of the Investigation, the Claimant was dismissed from the service of the Carrier on May 6, 1992.

The Organization argues that the Claimant did not receive a fair and impartial Hearing and that the charges were not precise.

After complaints by some of the Carrier employees at the Fort Worth Diesel Facility that narcotics were being used and sold, it planted a Special Agent in the facility. The female agent from Louisiana worked as a Laborer at the facility. She purchased marijuana from the Claimant on various dates which led to the Claimant's arrest.

A thorough review of the transcript reveals that the charges were very precise and the Claimant was prepared for the investigation. The testimony of the planted Special Agent and supporting testimony by other Special Agents clearly proved the Claimant was guilty as charged. The investigation was fair and impartial with the Claimant and his representatives allowed to question all witnesses.

While the Claimant worked for the Carrier for 13 years, the selling and use of narcotics cannot be tolerated. This Board finds no reason to overturn the Carrier's action in this case.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Dated at Chicago, Illinois, this 18th day of September 1995.