

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

Parties to Dispute: { International Association of Machinists and
Aerospace Workers

Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

Claim in behalf of Albert S. Thiel, Jr., Machinist Helper Apprentice, South Louisville Shops, for pay for all time lost, seniority rights, vacation, insurance, and all other rights unimpaired, beginning with his suspension from service on February 17, 1977, and his dismissal on March 28, 1977, and continuing until this matter is settled.

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 service, following investigation, on charges of:

"Conduct unbecoming an employee of the company in connection with your conviction in Jefferson Quarterly Court, Louisville, Kentucky, November 19, 1976, on charges of trafficking in a controlled substance (selling 18 capsules of speed to a police officer, and delivery of same)."

Claimant and Petitioner contest the company's action, arguing principally that discipline is unwarranted because the arrest for selling speed was off property and the Carrier had no right to discipline an employee for off duty behavior where it did not reflect negatively on the Carrier.

The question raised by Petitioner's defense has been decided by the Board in numerous cases. It is well established that a company may discipline an employee for off duty violations, especially those involving drugs and abuses of alcohol, and that such violations need not show damages. As it was stated in the following Third Division Award No. 21825:

"The Claimant argues that his conviction of a misdemeanor does not involve moral turpitude and that marijuana is neither a narcotic or dangerous drug.

The Claimant further argues that the incident occurred off duty and, therefore, should not subject him to discipline.

Many awards of this Board have held that a Claimant may be disciplined for conduct occurring while he is, in fact, off duty. See Third Division Awards No. 19263, 21228, and 21334 as examples.

Society is still debating the exact classification and relative harm of marijuana. Whether it is a narcotic or dangerous drug as contemplated by the Operations Bulletin is not decisive in this case. For criminal prosecution, State and Federal statutes differentiate between kinds and classes of drugs and narcotics for the specific purpose of assessing varying degrees of punishment in accordance with the type of drug or narcotic involved. It was intended that the Operations Bulletin cover all categories and classes of narcotics and dangerous drugs, and this would include marijuana as the average person views that substance. In other words, the Railroad and the employees understand marijuana to be one of those items prohibited, and it is not necessary that the different classes, categories and specific scientific names of each item be spelled out in the Bulletin."

Petitioner also asserts that Claimant was not guilty of the precise charge called for the Discipline Rule (Rule 34), which requires that employees "be apprised to the precise charge". Petitioner refers to the Notice of Charge, quoted supra, which refers to Claimant's conviction on November 19, 1976, whereas he was actually convicted on February 10, 1977, as corrected in Carrier's discipline letter dated March 28, 1977. November 19, 1976 was the original date of Claimant's trial on a charge of trafficking in a controlled substance. Petitioner's position is that by listing an incorrect date in the Notice of Charges as the basis for the investigation, Claimant was not properly apprised of the precise charges prior to the investigation.

The Board finds that the charge was specific enough to put Claimant on notice as to the matters to be inquired into at the investigation, and that neither Claimant nor Petitioner were disadvantaged as a result.

Form 1
Page 3

Award No. 8001
Docket No. 7912
2-L&N-MA-'79

For the reasons given, 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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 18th day of July, 1979.