

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen and Oilers
{ Consolidated Rail Corporation

Dispute: Claim of Employes:

1. That, in violation of the current agreement, Laborer Dwight R. Sawyer was unjustly dismissed from service of the Carrier following trial held on July 11, 1979.
2. That, accordingly, the Carrier be ordered to make the aforementioned Dwight R. Sawyer whole by restoring him to Carrier's service, with seniority rights unimpaired, made whole for all vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired, and compensated for all lost time plus ten (10%) percent interest annually on all lost wages, also reimbursement for all losses sustained account of coverage under health and welfare and life insurance agreements during the time he has been held out of service.

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, a Laborer with seniority date of December 20, 1977, at Carrier's Stanley Diesel Terminal, Toledo, Ohio, was charged with "(v)iolation of Rule 4002 of the Maintenance of Equipment Safety Rules in that you were observed smoking marijuana in Stanley Diesel Terminal at approximately 9:25 p.m. on June 26, 1979, while you were on duty and under pay ...". Pursuant to an investigatory hearing which was held on July 11, 1979, Claimant was adjudged guilty as charged and was terminated from Carrier's service. Said termination is the basis of this claim.

The instant case is the companion to Award No. 9300 which was decided by the Board previously and which involved the dismissal of Laborer T. Apel for charges that were exactly the same as those cited hereinabove. Though said cases involve the same incident, their respective claims have been filed and argued separately. With the sole exception that Mr. Apel appeared as a witness and testified on behalf of Claimant in the instant case (although said testimony is deemed by the Board not to have been significant), the same factual circumstances

are operative in both cases and the same basic arguments have been proffered by the parties in support of their respective cases. Insofar as the Board can see no appreciable differences whatsoever between the two cases, the same rationale and logic which was developed in Award No. 9300 will also be applied in the instant case thus necessitating the rendering of exactly the same award as was rendered therein.

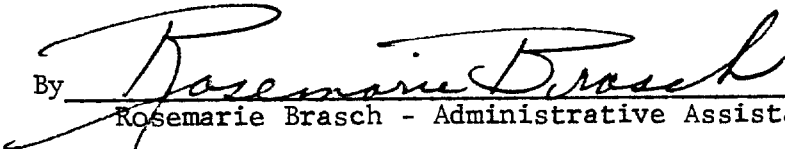
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of September, 1982.