

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen & Oilers
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(National Railroad Passenger Corp.

Dispute: Claim of Employes:

1. That, in violation of the current agreement, Coal Passer S. K. Green was unjustly dismissed from service of the Carrier following investigation held on December 15, 1980.

2. That, accordingly, the Carrier be ordered to make the aforementioned S. K. Green 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 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 Claimant is assigned as a Coal Passer at the Carrier's Beech Grove Power Plant, Beech Grove, Indiana. Following an investigation conducted on December 15, 1980, the Claimant was found guilty and was dismissed from service in conjunction with the following charges:

1. Violation of Rule I of the N.R.P.C. Rules of Conduct by your insubordinate actions due to being off your job assignment and out of your work area between 10:30 a.m. and 11:35 a.m. on December 4, 1980.
2. Violation of Rule K of the N.R.P.C. Rules of Conduct by your failure to attend to your duties in the Power House between 10:30 a.m. and 11:35 a.m. on December 4, 1980.

3. Violation of Rule L of the N.R.P.C. Rules of Conduct by your absence from duty without proper authority between 10:30 a.m. and 11:35 a.m. on December 4, 1980.
4. Violation of Rule C. of the N.R.P.C. Rules of Conduct by being under the influence of narcotics while on duty on company property at 11:35 a.m. on December 4, 1980.

The Carrier contends that the combination of absenteeism from one's assigned duties, the wilful disregard of a supervisor's instructions, and the use of narcotics when on or subject to duty, justifies dismissal.

The Organization contends the hearing was not conducted consistent with the requirements of Rule 25 which states in pertinent part:

"Employees who have been in service more than 60 calendar days shall not be disciplined or dismissed without a fair and impartial investigation,..."

The charge that the Claimant was not permitted to examine the Carrier's witnesses is not supported in the record. Although Claimant Green asked relatively few questions, his co-defendant Madden engaged in extensive cross-examination of witnesses.

Some dispute exists as to the exact time the Claimant was away from his job. However, the record does support the charge that the Claimant and a co-worker were absent from their assigned work area. Both acknowledged they had been previously advised that they could only leave their work area with the permission of their supervisor. The laboratory tests taken that day were "positive" concerning the presence of several controlled substances, specifically marijuana, barbiturates, and cocaine metabolite. As such, the charge of being "under the influence" while on duty is also supported by the record.

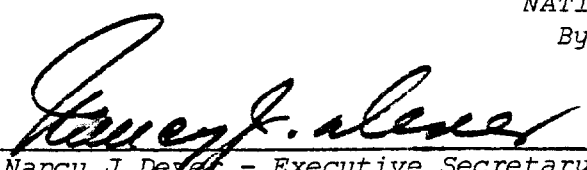
Based on the entire record, violation of the Rules as charged has been established. The Board concludes that dismissal is warranted.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Devell - Executive Secretary

Dated at Chicago, Illinois, this 18th day of April, 1984