

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
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(National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That under the current Agreement, the National Railroad Passenger Corporation (Amtrak) unjustly dismissed Chicago, Illinois Electricians Anthony Joseph and John Salzer from service, effective June 18, 1982.
2. That accordingly, the National Railroad Passenger Corporation (Amtrak) be ordered to restore Electricians Anthony Joseph and John Salzer to service with seniority unimpaired and with all pay due them from the first day they were held out of service until the day they are returned to service, at the applicable Electrician's rate of pay for each day they have been improperly held from service; and with all benefits due them under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due them, including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due them under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to them had they been working in the aforementioned period in order to make them whole; and expunge their records.

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.

Claimants, Anthony Joseph and John Salzer, were Electricians employed at the Carrier's 16th Street facility in Chicago, Illinois.

On May 25, 1982, Claimants were instructed to attend an investigation in connection with the following charges:

Your responsibility for your alleged failure to comply with that portion of the National Railroad Passenger Corporation Rule of Conduct "C" which reads: "Reporting for work under the influence of alcoholic beverages or narcotics, or the use of alcoholic beverages while on or subject to duty or on company property is prohibited". In that at approximately 0200 hours of May 21, 1982, you were observed by General Foreman Elias Loumakis to be in possession of and being suspected of partaking in the use of marijuana in the vicinity of Track D-10 South by the Sand Tower.

As a result of the investigation, the Claimants were found guilty of the charges and terminated from the service effective June 18, 1982.

The Organization contends that the hearing officer, J. M. Brown, did not afford the Claimants a fair hearing and made statements which demonstrated that he had already assumed the ultimate fact that the Claimants had possession of marijuana on the date and time charged. Consequently, argues the Organization, the hearing officer had already reached his conclusion and had prejudged the Claimants prior to the hearing.

Moreover, the Organization argues that the Carrier deprived the Claimants of a fair and impartial investigation when it adduced their past discipline records at the hearing and used them as the main basis for disciplining them.

Finally, the Organization argues that the Carrier failed to meet its burden of proof to convincingly demonstrate that Claimants were guilty as charged and that the Carrier was justified in dismissing them. The Organization contends that there was no evidence that either of the Claimants was observed by anyone to be in possession of marijuana. The Foreman testified that he only saw a third person, a woman, smoking. The Organization contends further that the Carrier failed to present any evidence of probative value that either of the two marijuana butts had been in the Claimants' possession and that Claimants cannot be found guilty upon only innuendo and suspicion.

Finally, the Organization argues that the action taken against the Claimants was unjust, lacking in good faith, arbitrary, and capricious, as well as unreasonable and excessive.

The Carrier argues that the Claimants were afforded a fair and impartial hearing. The Carrier contends that the charges were written specifically, setting forth the exact rule violations and dates and times of the incidents; the Claimants were given an opportunity to present evidence and witnesses in Claimants' defense and were allowed to cross-examine Carrier witnesses.

The Carrier argues further that it met its burden of proof by producing clear, consistent, and amply sufficient evidence to support the guilty finding. Carrier contends that credible witnesses saw the Claimants drop objects from their hands and step on them; and then the General Foreman, Loumakis, later found three warm, hand-rolled cigarette butts in the same place where the Claimants had been. Those butts were later analyzed by a laboratory and were found to contain marijuana.

Finally, the Carrier argues that the discipline assessed was warranted and that the railroad industry cannot afford to retain employees who work under the influence of intoxicating substances. It is a major offense, argues the Carrier, and it was justified in terminating the Claimants.

This Board has reviewed the lengthy transcript of testimony and the other evidence in this case, and it finds that the Carrier had sufficient cause to take disciplinary action against the Claimants. Although there are some conflicts in the testimony, the circumstantial evidence makes it clear that the Claimants were engaging in behavior that violates the Carrier's rules. Moreover, the Board is not in a position to determine the credibility of the witnesses and must rely on the findings of the investigating officer. Nothing appears in the record to lead us to question his findings.

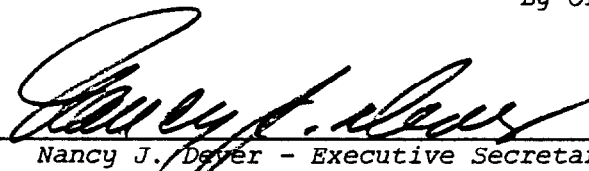
On the other hand, this Board does find that, although the Claimants were guilty of a very serious offense, the discharge action taken by the Carrier was so excessive in this instance as to constitute an arbitrary penalty. The Carrier did not properly take into consideration, as it should, the length of service and previous records of the Claimants prior to imposing the penalties. Moreover, there was evidence that the Claimants, when accused of the serious offense, offered to take a blood test but were unable to do so when they arrived at the hospital. Therefore, we hereby reduce the dismissals to lengthy suspensions, with the hope that the strong disciplinary action will encourage the two Claimants to conform their behavior to the rules. Accordingly, the Claimants are to be restored to the service with seniority and other rights unimpaired, but without any compensation for time lost while out of service.

A W A R D

Claim sustained to the extent indicated in Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 14th day of November 1984.