

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11253
Docket No. 11131
2-SLSW-EW-'87

The Second Division consisted of the regular members and in addition Referee Ronald W. Nelson when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(St. Louis Southwestern Railway Company

Dispute: Claim of Employes:

1. That the St. Louis Southwestern Railway Company unjustly dismissed Electrician J. H. Travis from service on November 5, 1984.

2. That accordingly, the St. Louis Southwestern Railway Company be ordered to compensate Electrician J. H. Travis eight (8) hours each day, five (5) days a week including holiday pay commencing with November 5, 1984 and continuous until such time as he is returned to service of the Carrier with seniority rights unimpaired and all fringe benefits paid as though he had remained in the service of this Carrier.

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 was employed by the Carrier at the Pine Bluff Diesel Shops, Pine Bluff, Arkansas. He holds a seniority date of February 13, 1967.

Claimant was employed as an Electrician by the Carrier for more than twenty and one-half (20 and 1/2) years. Claimant's personal record was clear until he was charged and convicted by the State of Arkansas on October 1, 1984, for possession of a controlled substance with intent to deliver. Claimant pleaded guilty to the charges which is a Class C felony under the Arkansas Law. Claimant was fined eight thousand dollars (\$8,000) and placed on probation for five (5) years. Subsequently, the Claimant's fine was removed, and the period of probation was terminated.

On November 5, 1984, the Claimant was removed from service pending Investigation on the charge that he violated Rule G and Rule 801 of the Rules and Regulations Governing Mechanical Department Employees. The pertinent portion of each Rule is quoted below:

Rule G - "The illegal use, possession or sale while on or off duty of a drug, narcotic or other substance which affects alertness, coordination, reaction, response or safety, is prohibited."

Rule 801 - "Employes will not be retained in the service *** who conduct themselves in a manner which would subject the railroad to criticism."

An Investigation was held on November 20, 1984, and the Claimant was found in violation of the Rules as charged. As a result, he was dismissed from service. A Claim was timely filed on behalf of the Claimant and denied at each level of appeal.

The Organization alleges that Rule G as stated in the charge letter did not apply to the Claimant as he was an employe of the Mechanical Department. In support of its allegation, the Organization included as Exhibit 1 of the Investigation, a copy of revised Rule G from the Rules and Regulations of the Transportation Department. On page 2 of the Transcript of Investigation, the Organization quoted Rule G from the Rules and Regulations Governing Mechanical Department Employees which was effective April 1, 1978. It is true that this was the Rule G which was effective April 1, 1978; however, as pointed out by the Carrier, Rule G of the Rules and Regulations Governing Mechanical Department Employees was revised effective April 30, 1982, and reads in its entirety as follows:

"G. The use of alcoholic beverages or intoxicants by employes subject to duty, or their possession, use, or being under the influence thereof while on duty or on Company property is prohibited.

Employes shall not report for duty under the influence of, or use while on duty or on Company property any drug, medication or other substance, including those prescribed by a doctor, that will in any way adversely affect their alertness, coordination, reaction, response or safety. Questionable cases involving prescribed medication shall be referred to a Southern Pacific Medical Officer.

The illegal use, possession or sale while on or off duty of a drug, narcotic or other substance which affects alertness, coordination, reaction, response or safety, is prohibited. (Effective April 30, 1982)."

It is clear, therefore, that the Claimant was correctly charged with Rule G and Rule 801. There can also be no doubt that Rule G as quoted by the Carrier in the charge letter, the caption of Investigation, and the dismissal letter, was Rule G from the Rules and Regulations Governing Mechanical Department Employes and was applicable to the Claimant.

Undoubtedly, an article announcing the Claimant's felonious activity and subsequent conviction which appeared in the November 3, 1984, edition of the Pine Bluff Commercial was read by many readers who were aware the Claimant was an employe of the Carrier. It was not, therefore, unreasonable for the Carrier to conclude that the Claimant's misconduct and the resulting publicity had subjected the Carrier to criticism and loss of good will.

A careful review of the case law shows that the Board has consistently held that felonious conduct, such as that displayed by Claimant in the instant case, whether occurring on or off the Carrier's property and which results in a conviction, will support the dismissal of Claimant. See Second Division Awards: 9996, 10626; see also Third Division Awards: 21761, 21825, 24994; and see PLB No. 3469; Award No. 33.

Thus, after a careful review of the entire record, this Board is of the opinion that the discipline imposed by the Carrier, in view of the seriousness of Claimant's conviction, was neither arbitrary, capricious, nor excessive.

Accordingly, this Claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1987.