

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

PARTIES TO DISPUTE: (D. O. Teglovic
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(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM:

1. Mr. Teglovic's dismissal was based upon conduct which was not job related. No evidence was presented to substantiate any deficiencies in his work performance.

2. The letter of dismissal was based upon "conduct unbecoming an employee in that you were an accomplice caught in the act of handling drugs for sale, and that you were found guilty by the Huron County Common Pleas Court". At no time prior to the discipline hearing of February 19, 1986, was Mr. Teglovic ever advised of the meaning of the term "conduct unbecoming an employee." No standards or guidelines exist to aid an employee in determining what he may or may not do in attempting to meet this standard.

3. Prior to the discipline hearing on February 19, 1986, other Willard, Ohio, employees of the Baltimore & Ohio Railroad Co. have been convicted of alcohol and/or drug-related offenses. Although the Willard, Ohio, management of the Baltimore & Ohio Railroad Co. was aware of these other offenders, no discipline proceedings or job actions were taken against them.

4. The notice of discipline-dismissal which was received by Mr. Teglovic on March 17, 1985, was not prepared on corporate stationery nor was it signed by any representative of the Baltimore & Ohio Railroad Co. or the Chessie System. Therefore, Mr. Teglovic was denied information pertaining to the discipline-dismissal and information necessary in his appeal.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 convicted on October 31, 1985 of having unlawfully and knowingly sold or offered to sell marijuana on or about February 27, 1985. His sentence of six (6) months in the Ohio State Reformatory was suspended, and he was placed on probation for two (2) years. Subsequently, Claimant was charged by the Carrier with conduct unbecoming an employee, and following an investigation, he was dismissed on March 17, 1986. Claimant's Attorney contends that the dismissal was unfair and improper for various reasons, including that the dismissal was based upon conduct which was not job related.

This case cannot be decided on its merits. The appeal is procedurally defective. The language of Rule 33 of the Agreement (between the Carrier and the Organization) provides that only the "duly authorized representative" (that is, the Carmen's Organization) may file and prosecute claims on behalf of Carmen. Under applicable provisions of the Agreement and the Railway Labor Act, Claimant's Attorney is not authorized to file an appeal in his behalf. Compounding the procedural defects, the Carrier's local officer was not timely notified of the rejection of his decision, as required by Rule 33, and no conference on the property was requested or held as required by the Railway Labor Act.


This Board has no authority to set aside these procedural defects and to decide the matter on its merits.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1988.