

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
(
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

1. That under the current Agreement, Mechanical Department Electrician J. C. Parmenter was unjustly treated when he was dismissed from service on March 31, 1988, following investigation for alleged violation of Rule "G" of the General Rules and Regulations of the Southern Pacific Transportation Company (Western Lines).

2. That accordingly, the Southern Pacific Transportation Company be ordered to restore Electrician J. C. Parmenter to service with all rights unimpaired, including service and seniority, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and loss of wages; including interest at the rate of ten percent (10%) per annum.

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.

Claimant was employed by the Carrier as an Electrician at its Oregon Division in Eugene, Oregon.

On February 16, 1988, the Carrier notified the Claimant to appear for a formal Investigation in connection with the following charge:

". . . to develop the facts and establish responsibility, if any, for having used marijuana as evidenced by the

results of a urine toxicological test taken on February 2, 1988, which showed positive for marijuana, for which occurrence you are hereby charged with responsibility which may involve violation of Rule G of the Rules and Regulations of the Southern Pacific Transportation Company."

After two postponements, the Hearing took place on March 21, 1988. On March 31, 1988, the Carrier notified the Claimant that he had been found guilty of the charge brought against him and was assessed discipline of dismissal. Thereafter, the Organization filed a Claim on the Claimant's behalf, challenging his dismissal. On May 1, 1988, the Carrier offered to reinstate the Claimant to work on a traditional conditional reinstatement basis. On June 24, 1988, the Organization rejected the offer.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit.

This Board has also reviewed the evidence and testimony in this case, and we find that there is sufficient evidence to support the finding that the Claimant was guilty of violating Rule G. The record reveals that after the Claimant was seen engaging in work activities without the required blue flag protection, he was ordered by the Carrier to take a drug test. The results of the drug test indicated that the Claimant showed positive for marijuana. Rule G prohibits the use, while on or off duty, of a drug, narcotic, or other substance which affects alertness, coordination, reaction, response, or safety. The record reveals that the Claimant was clearly in violation of Rule G.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.


In the case at hand, the record reveals that the Claimant was offered an opportunity to come back to work if he entered the Carrier's Employee Assistance Program. He apparently refused. Although this Board takes a very dim view of drug use by railway employees, this Board believes that the Carrier should make available to the Claimant, if he so desires, the services of the Carrier's Employee Assistance Program. If the Claimant agrees to that and successfully passes a back-to-work physical, this Board orders that the termination be reduced to a lengthy suspension and that the Claimant be reinstated, but without backpay. A requirement of that reinstatement, however, is that the Claimant must participate in and successfully complete the Carrier's Employee Assistance Program.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of November 1990.