

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12880
Docket No. 12806
95-2-93-2-182

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

PARTIES TO DISPUTE: (International Brotherhood of Firemen and
(Oilers
(
(CSX Transportation, Inc. (formerly
(Seaboard Coast Line Railroad Company)

STATEMENT OF CLAIM:

- "1. That under the current and controlling agreement, Firemen and Oilers, G. K. Harris, ID No. 169908 was unjustly dismissed from service on May 27, 1992 by C.S.X. Mechanical Superintendent D. L. Jones.
2. That accordingly, Firemen and Oilers G. K. Harris be restored to his position with the C.S.X. Transportation, Inc. be made whole for all lost time with seniority rights unimpaired, vacation, health and welfare, hospital and life insurance benefits be paid effective May 27, 1992, the payment of 10% interest rate added thereto."

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 employee 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's history with the Carrier is somewhat unusual. He has not worked since he was dismissed from service on October 10, 1985. As a result of Second Division Award 11417, adopted January 20, 1988, Claimant was reinstated to service with his seniority intact and paid for all time lost. Claimant did not, however, resume service because he tested positive for a prohibitive drug and was medically disqualified on March 3, 1988. Nothing further was heard from Claimant (nor did Carrier take any further action) until February 1992 when Carrier was advised by a labor representative that Claimant was seeking to return to service.

On March 28, 1992, Claimant wrote to both the General Foreman in the Hialeah Locomotive Shops and the Director of Labor Relations seeking to return to service as either an Electrician Apprentice or as a Fireman and Oiler.

Both Carrier officers referred Claimant to the Carrier's Medical Department on April 8, 1992. Simultaneously, Carrier, consistent with an established practice arranged for its Police and Special Services Department to determine if Claimant had been involved in any type of criminal activity. He had. His rap sheet led Carrier to issue a Notice of Charges for conduct unbecoming an employee in connection with the following digressions:

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| "June 26, 1988 | - Aggravated assault and carrying a concealed firearm. |
| August 1, 1989 | - Criminal mischief (2 counts). |
| August 19, 1989 | - Trespassing after warning. |
| January 22, 1990 | - Disorderly intoxication and failure to appear (8-19-89 charges). |
| March 24, 1990 | - Rule to show cause (injunction order). |
| October 31, 1990 | - Possession of cocaine. |
| May 19, 1991 | - Battery (domestic)." |

A proper Investigation was held on May 12, 1992, and Claimant was dismissed from service effective May 27, 1992.

The Organization protested the Investigation on two fronts:

- (1) The Notice of Charges was not timely and
- (2) These activities occurred while Claimant was on medical leave and away from work.

The record establishes that Claimant, as a result of Second Division Award 11417 had his seniority restored and although he could not work because of his medical disqualification, he still maintained an employee relationship with the Carrier at the time of the criminal charges. The Notice of Investigation was timely. No evidence has been brought forth to lead the Board to believe otherwise. True, the incidents leading to the charge of conduct unbecoming an employee occurred in 1988, 1989, and 1990, but the Rule provides that an employee will be notified within 10 days from the date of the occurrence where Carrier believes there may be cause for discipline.

When Carrier became aware of Claimant's off duty record, it timely set the Investigation. In Award 73 of Public Law Board No. 3445 it was held that:

"It is well settled that the Carrier is not required to investigate until it has cognizance of the act which will trigger the investigation."

Claimant's conviction for possession of cocaine is sufficient to establish the charge of "Conduct Unbecoming" without considering the aggravated assault, the carrying of a concealed firearm, etc. It is stated in Award 1803 of Public Law Board No. 3561:

"People involved in hard drugs have no place in railroad employment."

It is also stated in Award 15 of Public Law Board No. 4504 that:

"It is a long standing principle of labor relations in the Railroad Industry that a Carrier need not retain an employee who's conduct outside of working hours is so disreputable that it reflects poorly upon and causes public embarrassment for the Employer."

The dismissal stands.

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AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 17th day of April 1995.