

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award Number 21192
Docket Number SG-21264

Walter C. Wallace, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Texas and Pacific Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the **Brotherhood** of Railroad **Signalmen** on the Texaa and Pacific Railway company:

On behalf of Mr. **James F.** Shannon, **III**, who waa **dismissed** Decem-
ber 31, 1973, for **reinstatement** ad Signal Maintainer at Centennial Yard,
with back pay for time lost, and with all rights, vacation time and seniority
unimpaired. Carrier file: **B 315-62**

OPINION OF BOARD: This claim, unless it has already been adjusted, involved an array of issues that seemed to increase as it reached higher **levels** of consideration. The underlying matter is a disciplinary dismissal imposed upon claimant **as** a consequence of his conviction of the crime of possession of a quantity of a narcotic drug (marijuana), alleged to be a felony under Texas law. Claimant had entered a plea of guilty and the conviction **was** based upon such plea. An **investiga-**
tion and hearing was held on the property and the Organization did not represent claimant **at** the hearing; its representation came at a later stage. Claimant had sought representation by a **lawyer** unconnected with the Organization but such representation **was** not permitted by the hearing officer based upon an interpretation of the applicable **rules**. Thereafter, at the hearing claimant represented **himself** and **his** sole **defense, based** upon the opinion of counsel, waa that **his** conviction **was** not a final decree and following his probation **his record** would be cleared. Further, claimant maintained that pursuant to law marijuana was **no** longer **classified** a6 a narcotic drug and his crime was not a felony. Subsequently, on the day of the hearing claimant was **dismissed** based upon the conclusions reached that claimant had violated General Rules A and C of the Rules and Regulations for Maintenance of Way and Structures because of his conviction of a felony offense of **un-** lawful possession of a narcotic drug. Claimant thereafter made appeal to successive **levels** of supervision seeking reinstatement, back pay for time lost, etc..

It is undisputed that claimant failed to notify Carrier representatives within 60 days in writing of **his** rejection of their decision in accordance with Section 1(b) of Article **V**, the applicable time limits **rule**. There is no contention that Carrier waived its application and we **must** conclude that claimant did **not** comply with the rule **and** his claim is barred from consideration by the Board.

We subscribe to the **views** expressed by Referee Weston in Award 8564 of this **division and** concur that **appeal** by claimant is not the equivalent to the required notice of rejection of the decision of the representativea of the **Carrier**. A decision, such as this, that is **not** on the merits is leas than **satisfying**. **Nevertheless**, the rules established by the **parties are** explicit and they may not be avoided. **Accordingly**, the claim is **dismissed**.

FINDINGS: The Third Division of the Adjustment **Board**; upon the whole record and all the evidence, finds and holds:

That the **parties** waived **oral** hearing;

That the Carrier and the **Employes** involved in this dispute are respectively **Carrier** and **Employes** within the meaning of the **Railway** Labor Act, as approved June 21, 1934;

That this Division of the Adjustment **Board has** jurisdiction over the dispute involved herein; and

That the claim be dismissed.

A W A R D

Claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **Third** Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 13th day of August 1976.