

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 Texas and Pacific Railway company:

On behalf of Mr. James F. Shannon, III, who was dismissed December 31, 1973, for reinstatement as 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 investigation 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, was 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 as 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 unlawful 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 representative of the **Carrier**. A decision, such as this, that is **not** on the merits is less 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 **Employees** involved in this dispute **are** respectively **Carrier** and **Employees** 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:



Executive Secretary

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