

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24339
Docket Number SC-24054

Robert E. Peterson, Referee

[Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (Seaboard System Railroad
((former Seaboard Coast Line Railroad Company)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Coast Line Railroad Company:

Appeal on behalf of Mr. R. O. Smith that Superintendent W. E. Satterwhite, Savannah Division, reverse his decision to dismiss Mr. Smith."

OPINION OF BOARD: There is no dispute as to the material and relevant facts in this dispute as they involve the basis for the charges upon which Claimant was dismissed from service. The record quite conclusively discloses Claimant had been arrested on September 11, 1974 and charged with possession of 25 pounds of marijuana which he was attempting to sell on the campus of the Savannah State College in Savannah, Georgia, and that after a long and complex legal process he was subsequently convicted in April, 1978 of the charges and then, following appeal, was eventually, in March, 1980, taken into custody to begin serving a five-year sentence.

Although the Organization vigorously seeks reversal of Claimant's dismissal from company service on the basis of assertions Claimant's rights of due process had been breached by the manner in which Carrier conducted its investigation as related to the above matter, the Board finds but little merit to such arguments. We also find no useful purpose would be served by burdening the record with a review in detail of each of those arguments or assertions. While we recognize each case must be considered on its own merit, the principles or criteria in determining most issues the Organization would raise in this regard have been developed and commented on over the years in a great many awards, with and without referees. On this property and between the same parties to this dispute, procedural arguments not unlike most of those raised here were considered and commented upon by this Division in its Award No. 22521 (Referee Paul C. Carter). We concur in the reasoning set forth in that Award relative to like procedural arguments having equal application in the instant case. Basically, and contrary to the Organization's position, we find the hearing notice was timely given and the charges sufficiently precise. Claimant and his representatives were afforded ample opportunity to prepare a proper defense, to present and examine witnesses, to offer meaningful comment on the record, and to make proper objections. There was no need to sequester witnesses in the light of the charges. It was not improper to make Claimant's past personal record a part of the transcript of investigation. The hearing was conducted in a fair and impartial manner and there is no evidence of bias or prejudice on the part of the Carrier or the hearing officer. Actually, although we do

not necessarily believe **Carrier** was required to do so, it granted a hearing recess (which came to be 22 months) at the suggestion of **Claimant's** attorney so that he might first exhaust court appeals in an attempt to overturn the conviction. Finally, as **Carrier** had no choice but to continue the hearing "in absentia" after it learned there were to be no further appeals and found **Claimant** to already be Incarcerated, we fail to see how this could be treated as **predjudicial** treatment, particularly since most of the hearing had been concluded prior to the recess and **Claimant** was in fact represented at the reconvened hearing by his representatives. We do believe, however, that it was not proper for the **Carrier** to have enlarged the charges at the time it set the date for the hearing to be reconvened, even though the additional **charge** was in some respects related to the initial charge; the **Carrier** charging **Claimant** with being absent from duty without permission, it **having** previously permitted **Claimant** to work pending the outcome of the court appeals. It is our opinion the investigation should have been kept within the scope defined in the initial charges, and that this **new** subject be covered by an entirely new charge to be investigated **separately** at a later date. This, in and of itself, does not constitute sufficient reason to set the hearing aside, for as we have pointed out above it was conducted in a fair and impartial manner and substantial probative evidence was introduced into the record prior to the recess upon which a **determination could be made separate and apart from the new charge.**

On the basis of the record as **presented** and developed on the property, this Division has no recourse but to hold that **Carrier's disciplinary** action was commensurate with the offense and therefore a justifiable penalty.

FINDINGS: The Third Division of the Adjustable **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 **Agreement** was not **violated.**

A W A R D

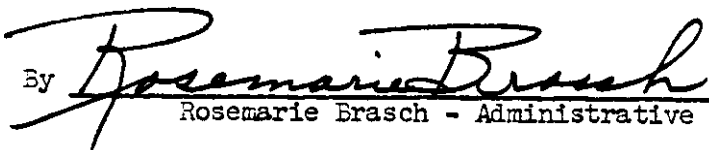
Claim denied.

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By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of April 1983.