

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24728
Docket Number MW-25025

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of **Trackman** T. J. Harris for alleged violation of 'Rule 18' was without just and sufficient cause, an abuse of justice and discretion by the Carrier and on the basis of unproven charges (System File 37-SCL-81-20/12-39 (81-1036) K3).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The record shows that Carrier's Division Engineer, in checking on other matters, learned of a rumor that claimant "had been in trouble in Georgia." Further investigation by Carrier developed that on April 22, 1981, claimant had appeared **before** Superior Court Judge Elie L. **Holton**, **Waycross** Judicial Circuit, Waycross, Georgia, and pleaded guilty to five counts of violation of the Georgia Controlled Substance Act, involving the following cases:

- Case 804-92-Count 1. Violation Georgia Controlled Substance Act. On June 11, 1980, did unlawfully sell to Sam Aiiers, Rick Tucker and Wayne Kelley, for the sum of \$70.00 a controlled substance, to wit: marijuana, in violation of the Georgia Controlled Substance Act.
- count 2. Violation Georgia Controlled Substance Act. On June 11, 1980, did unlawfully sell a controlled substance, to wit: Secobarbital and Amobarbital, a Schedule II drug, in violation of the Georgia Control Substance Act, for the amount of \$2.00, same being sold to Rick Akers.
- Case 81R-47-Count 3. Violation Georgia Controlled Substance Act. On June 13, 1980, possessed a controlled substance, to wit: Amobarbital and Secobarbital, Schedule II drugs, in violation of the Georgia Controlled Substance Act.
- Case 81R-48-Count 4. Violation Georgia Controlled Substance Act. On June 13, 1980, possessed a controlled substance, to wit: marijuana, more than one ounce in violation of the Georgia Controlled Substance Act.

Case 81R-49-Count 5. Violation Georgia Controlled Substance Act. On June 13, 1980, possessed a controlled substance, to wit: cocaine, a Schedule II drug, in violation of the Georgia Controlled Substance Act.

Claimant was sentenced to 10 years probation on each count, to run concurrently, and fined \$1,000.00 plus court costs on Count 1 and \$1,000.00 on Count 2.

Carrier's Rule 18 of the Safety Rules for Engineering and Maintenance of Way Bmployes reads:

"18. Disloyalty, dishonesty, desertion, intemperance, imorality, vicious, or uncivil conduct, insubordination, sleeping on duty, incompetence, making false statements, or concealing facts concerning matters under investigation, will subject the offender to dismissal."

On July 10, 1981, claimant was instructed to attend a hearing on the charge:

"You are hereby charged with violation of Rule 18 of the Safety Rules for Engineering and Maintenance of Way Bmployes effective September 1, 1967. These charges result from your conviction of five counts of the Georgia Controlled Substance Act. You are specifically charged with that portion of Rule 18 dealing with disloyalty in that your conviction of these charges brought discredit to this Company and also you are specifically charged with that portion of Rule 18 dealing with immorality as a result of your conviction of these charges.

Arrange to attend a formal hearing to be given to you in my office, 101 Hammond Street, Rocky Mount, North Carolina, at 9:00 A.M., July 28, 1981. You may have present any witnesses who have knowledge of this matter and you may have representation if you so desire, in accordance with the agreement under which you are employed. Your personal record file will be reviewed in the hearing."

The hearing was conducted as scheduled. A review of the transcript shows that the hearing was conducted in a fair and impartial manner. Claimant was present throughout and was represented. In the hearing the **claimant** admitted that he had pleaded guilty in court to each of the charges involved.

This Board has generally taken a dim view of cases of **employees** using or trafficking in drugs. In our recent Award No. 24525, involving a situation quite similar to the one here involved, we held:

"Claimant pled guilty to the court charges. Pursuant to plea agreement, sentence was suspended. Claimant was fined \$1,000.00 and placed on probation for a period of five years.

The use of drugs, or the dealing in drugs, is considered a serious offense in the railroad industry, usually resulting in dismissal. See Second Division Awards 8205, 823'7, Award 8 of Public Law Board No. 1324, and Third Division Awards 24356, 23264, 22530, and 22547."

See also Second Division Award 8001, and Third Division Awards 23410 and 24608.

The claim will be denied.

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

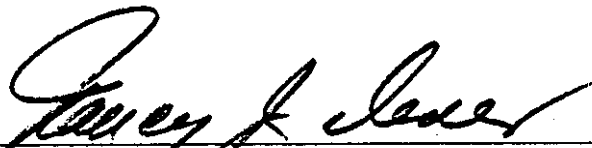
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March, 1984.