

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25420  
Docket Number MW-25624

Paul c. Carter, Referee

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: (

(Norfolk and Portsmouth Belt Line Railroad Company

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

(1) The dismissal of Extra Gang Laborer J. Tyndall, Jr. for alleged \*Violation of General Notice dated March 12, 1980 of the President and General Manager, Norfolk and Portsmouth Belt Line Railroad, Rule G of the N&W Operating Rules, and the misstatement of fact on his Report of Medical Examination. was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (Carrier's File 40-Tyndall).

(2) The Claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: The record shows that Claimant had previously been dismissed from Carrier's service on August 27, 1981, for sleeping on duty. The dispute arising from that occurrence was progressed to this Division of the National Railroad Adjustment Board and docketed as MW-24804. On December 21, 1982, the parties agreed to the reinstatement of Claimant and the withdrawal of Docket W-24804 from the Board, resulting in dismissal Award No. 24130. One of the conditions of Claimant's reinstatement, set forth in Letter Agreement of December 21, 1982, was:

"In full and complete settlement of this claim it is agreed that Extra Gang Laborer James Tyndall, Jr. will be reinstated to service with all seniority and vacation rights unimpaired, but without any pay for any lost time provided he satisfactorily passes physical examination given by our company physician..

On December 22, 1982, Claimant went to Carrier's physician for a physical examination prior to return to service. The Carrier's medical form pertaining to past history contained, what appears to be rubber stamped:

"NARCOTICS YES ( ) NO ( )"

Claimant's form was checked "No". On December 27, 1982, Carrier's Officers were advised that analysis of urine sample taken from Claimant on December 22, 1982, had been received, indicating positive for the presence of marijuana, as result of which Claimant was notified that he was disqualified for further employment with the Carrier.

**The** Organization requested a formal investigation. The investigation was scheduled for and conducted on January 6, 1983, Claimant being charged with violation of General Notice of March 12, 1980, Rule "G" of the N&W Operating Rules, which were applicable, and with misstatement of facts on the **form** covering his medical examination (that part pertaining to Narcotics). The rules referred to are set forth in the record, and we see no necessity for repeating them here.

A copy of the Transcript of the investigation of January 6, 1983, has been made a part of the record. Following the investigation, Claimant was notified by Carrier's Assistant **Engineer** that his dismissal "**remains** in effect-.

We have carefully considered the evidence entered into the investigation, the contentions of the parties in the on-property appeal, and the contentions before the Board. Without passing **upon** the procedural issues raised, we do not find in the investigation the degree of evidence necessary to warrant the permanent dismissal of Claimant. Claimant contended from the beginning that he **understood** the question on the medical form pertaining to narcotics to mean whether he **was** then using narcotics, **and** not as to whether he may have tried narcotics in the past. The form itself is not clear on this. We understand that traces of narcotics may remain in a person's body for some time after the actual use thereof.

While we have issued numerous Awards upholding the dismissal of **employees** for the use of, possession of, or trafficking in drugs, **we** need more proof than is presented here.

Based upon the record before us, the Board concludes that Claimant should be restored to service with seniority **and** other rights unimpaired, but without any compensation for time lost while out of service, provided that, within thirty days of the date of this Award he passes satisfactory examination by Carrier's physician.

In passing, we note that Page 3 of Carrier's Exhibit "**C**" is simply not legible. As we have stated in previous Awards, if parties to disputes before this Board expect exhibits and other materials to be considered, then such exhibits and materials must be submitted in legible form.

**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 discipline was excessive.

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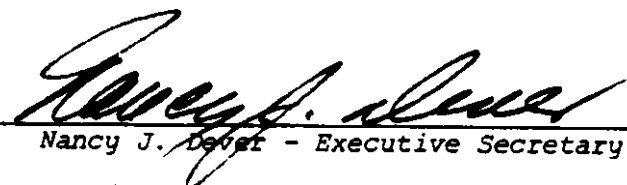
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Claim sustained in accordance with Opinion.

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

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1985,