

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25892  
Docket Number SG-25834

David P. Twomey, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Norfolk and Western Railway Company:

Appealing the dismissal of R. E. Parker by letter dated June 15, 1983, as a result of investigation held on June 3, 1983."

OPINION OF BOARD: The Claimant an employee with three years of service with the Carrier as a Signalman was advised through a hand delivered notice dated February 16, 1983 that he was the subject of disciplinary action. Through a letter dated February 24, 1983, Claimant was notified to attend a Formal Investigation concerning the following charge:

"... to determine your responsibility in connection with your engaging in conduct unbecoming an employee of the Norfolk and Western Railway Company on February 15, 1983 in that you were arrested and incarcerated for having possession of a controlled substance, making attempt to deliver a controlled substance and contributing to the delinquency of two minor children, all on February 15, 1983, in Livingston County, Illinois. ..."

Subsequently, the Formal Investigation was postponed several times until it was held on June 3, 1983. Shortly after the Formal Investigation, the Carrier notified Claimant that he was dismissed from the Carrier's service. The notification dated June 15, 1983 stated:

"Mr. R. E. Parker

As a result of formal investigation held on June 3, 1983 at St. Louis, Missouri, you are hereby dismissed from all service with Norfolk and Western Railway Company.

Attached is a copy of the investigation transcript.

/s/T. L. Polley  
Assistant Engineer, S&C"

The disciplinary action appealed by Claimant in this case was imposed by the Carrier for a violation of Rule 1714 of the Norfolk & Western Rules and General Rules of Conduct. This Rule states:

"1714. The conduct of any employee leading to conviction of any felony, or any misdemeanor, involving the unlawful use, possession, transportation, or distribution of narcotics or dangerous drugs, or of any misdemeanor involving moral turpitude is prohibited."

The Organization challenges the procedure undertaken by Carrier. Specifically the Organization contends that the Carrier dismissed Claimant on February 16, 1983 in violation of the Carrier's own Rule 701.

After reviewing the record we are satisfied that Rule 701 was not violated. Claimant was not dismissed outright on February 16. Rather, the record indicates, and the February 16, 1983 notice intones that Claimant was being held out of service pending investigation and decision. We believe a possible violation of Rule 1714 to be within the language of a "major offense", and the Carrier's decision to hold Claimant out of service pending investigation was clearly authorized by Rule 701.

Rule 1714's language is clear and its intent is obvious. A Carrier involved in the transportation of goods or passengers must rely on its employees to safeguard its own property, the well-being of all its employees, as well as the property of others with which the Carrier is entrusted. After reviewing the record we are satisfied that a finding of a violation of Rule 1714 by Claimant is supported by substantial evidence in the record. At the Formal Investigation, Claimant could not dispute the fact that he had plead guilty to a serious charge. Court documents included in the record indicate that Claimant plead guilty to possession of 10 but not more than 30 grams of marijuana with intent to deliver. Given the severity of this distribution offense and the prohibitive language of Rule 1714, we are satisfied that this conviction alone constitutes substantial evidence in support of a finding that Rule 1714 was violated.

In light of the Carrier's well found policy which has been clearly articulated through Rule 1714 and the totality of the facts contained in this record, we see no basis for disturbing the Carrier's determination in this case. The discipline of dismissal, although the most severe disciplinary measure the Carrier possesses is appropriate in this case. Accordingly, the claim is denied.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
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Nancy J. Deves - Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1986.