

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(The Belt Railway Company of Chicago

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

(1) The dismissal of Machine Operator, Truck Driver J. M. Gabby, Jr., for alleged violation of 'Company Rule G' was without just and sufficient cause, arbitrary, on the basis of unproven charges and in violation of the Agreement (Carrier's File P/R J. Gabby).

(2) The Claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was employed by Carrier as a Machine Operator. On February 26, 1987, he sustained an on-duty personal injury that caused him to lose time. On April 16, 1987, he was instructed to report for a return-to-work physical. As part of the examination, Claimant was required to give a urine specimen. The urinalysis turned up a positive find that Claimant had used marijuana prior to the examination. As a result of that finding, Claimant was charged with a Rule G violation and terminated.

Claimant was directed to attend a Hearing into the matter. The Hearing was held on May 12, 1987. The transcript of the Hearing has been made part of the record. A review of the record reveals that Claimant received a full and fair Hearing and that in spite of the Organization's position to the contrary, he had an opportunity to make his case and rebut Carrier's charges.

This Board has carefully reviewed the record before us and we can find no basis on which to disturb Carrier's action. Claimant clearly had violated Rule G. He had smoked or ingested marijuana. The urinalysis confirmed that. Claimant was aware that use of marijuana was a Rule G violation. He had been dismissed for it on a previous occasion and he escaped being dismissed another time when he tested positive for marijuana because of a potential time limit violation by Carrier.

The simple fact is that Claimant is guilty of a Rule G violation. He has a long record of prior discipline for a variety of Rule infractions. He has been dismissed and put back on a leniency basis twice before. Carrier has been more than tolerant of the Claimant and his dismissal cannot be considered arbitrary or unreasonable.

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 6th day of June 1989.