

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Union Pacific Railroad Company

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

(1) The dismissal of Section Foreman R. L. Montigue for alleged '... use of amphetamines, cocaine and illicit drugs on June 17, 1986, Baker, Oregon.' was without just and sufficient cause, arbitrary, on the basis of unproven charges and in violation of the Agreement (System File D-89/870083).

(2) The appeal presented by Assistant Chairman J. A. Wheeler to Regional Engineer W. E. Wimmer on October 6, 1986, shall be allowed as presented because Regional Engineer W. E. Wimmer did not disallow the appeal as contractually stipulated within Rules 48 and 49.

(3) As a consequence of either or both Parts (1) and/or (2) hereof, the Claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charge 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 employe 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 as a Section Foreman. On August 5, 1986, Claimant was directed to attend a formal Investigation of the charge:

"to develop the facts and determine your responsibility for incidents which occurred in the early morning hours of June 17, 1986 at Baker, Oregon. You allegedly admitted extended use of amphetamines, cocaine and illicit drugs to the Baker City

police. This indicates a violation of General Rules A, G and 607 of Form 798 'Safety, Radio and General Rules for All Employees,' effective April 1985, as revised April 27, 1986."

The Hearing took place on August 29, 1986, and, as a result, Claimant was dismissed from service. The Organization thereafter filed a Claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed the record in this case, and we find that on January 8, 1988, one week before the Organization filed its Notice of Intent to file an Ex Parte Submission with this Board, the Claimant signed a "Release of All Claims," which reads, in part:

"In consideration of the payment to me of the sum of Fifty Thousand Dollars *** I hereby release and discharge Union Pacific Railroad Company and all other parties whomsoever, from any and all claims and liability of every kind or nature *** and in consideration of the amount provided to be paid by the terms of this agreement, receipt of which is hereby acknowledged, I hereby waive all rights to return to active service. *** I have read the above, and understand it is a full release of all my claims."

That Release of all Claims indicates to this Board that the instant Claim has been settled, and it is now moot and barred from the Board's consideration.


This Board has reviewed the evidence in this case, and we must find that even if the Carrier had not been released, there is sufficient evidence in the record to support the finding that the Claimant was guilty of the offense with which he was charged. Moreover, his prior work record more than justified his dismissal. Consequently, even without the Release, the action taken by the Carrier was not unreasonable, arbitrary, or capricious.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dexter - Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1989.