

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (formerly Seaboard System
(Railroad and Louisville and Nashville Railroad)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard System Railroad (formerly L&N):

Claim on behalf of J.B. Johnson Jr., for reinstatement to service with all compensation and benefits restored, beginning June 9, 1989, and continuing until this dispute is settled, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, Rule 55, when it did not hold the hearing within the time limits, entrapped the Claimant and did not prove the charges." Carrier file 15-55 (89-56). BRS file: Case No. 7893-SSR(L&N).

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 employes involved in this dispute are respectively carrier and employes 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 were given due notice of hearing thereon.

Claimant entered Carrier's service on May 27, 1977. On the date of the occurrence here involved, Claimant was regularly assigned as a Lead Signal Maintainer covering the territory from McKenzie, Tennessee, to Union Street Interlocking, Memphis, Tennessee. This is a vital, important position relative to the proper maintenance of Carrier's signal system. On June 8, 1989, at approximately 6:50 P.M. during his off-duty time, Claimant was apprehended by the Tennessee Bureau of Investigation in the act of purchasing twenty (20) pounds of marijuana from an undercover agent of the T.B.I. At the time Claimant was apprehended, he was using a Company owned and marked vehicle and had with him on the seat of the Company owned vehicle a duffle bag containing

\$9,500.00 in cash for the purchase of the marijuana as well as a fully loaded 9mm hand gun. Because Claimant agreed to cooperate with the Tennessee Bureau of Investigation in its continuing investigation of the drug related activities, he was not immediately booked or placed in jail.

At approximately 7:35 A.M. on Friday, June 9, 1989, Claimant contacted his Supervisor and informed him of the events of the previous date. At that time, the Claimant, the Supervisor and the Signal Engineer all agreed that pending the outcome of the ongoing investigation, Claimant should take June 9 off as a "sick" day and a vacation during the following week - June 12 to 16, 1989.

By written notice dated June 15, 1989, Claimant was directed to report on June 22, 1989, for a formal Investigation in connection with the events which occurred on June 8, 1989. Included in the notice dated June 15, 1989, was the advice that Claimant was being withheld from service pending the outcome of the Investigation. At the request of the Organization Representative, the Investigation was postponed to and held on July 13, 1989, at which time Claimant was present, represented and testified on his own behalf. Subsequently, by written notice dated July 27, 1989, Claimant was informed that he was dismissed from Carrier's service effective June 16, 1989. Appeals on behalf of Claimant were initiated by the Organization and handled in the usual manner through the appeals procedures on the property. Failing to reach a satisfactory resolution of the dispute on the property, it has come to this Board for final and binding adjudication.

The Organization initially argued that this case was procedurally defective because, it says, Claimant was actually withheld from service on June 9, 1989, and, therefore, the Investigation which was initially scheduled for June 22, 1989, was not timely and in violation of the provisions of Rule 55 of the negotiated Agreement. The Organization also argued that Claimant was entrapped by the Carrier; that he should have been accorded the provisions and conditions of the "Red Block" Agreement; and that the discipline as assessed was excessive in light of Claimant's eleven (11) years of service.

Carrier, on the other hand, contended that there was no time limit violation; that Claimant's own testimony proved him guilty of the charges; and that the seriousness of the proven charges justified the penalty of dismissal.

Rule 55-Discipline reads, in pertinent part, as follows:

- "(a) An employe who has been in service more than thirty days will not be demerited, disciplined or dismissed without investigation, at which investigation he may be represented by an employe of his choice or representative of the craft or class of employes within the meaning of the Railway Labor Act. He may, however, be held out of service pending such

investigation. The investigation shall be held within ten days of the date charged with the offense or held from service, unless postponement is arranged for. . . ."

Time limit Rules as written into the negotiated Rules Agreements are meant to be obeyed. This Referee has so ruled on more than one occasion. Rule 55 is clear, unambiguous and mandatory. However, the fact situation in this case is more than a "strawman" as alleged by the Organization. The testimony and the written records clearly indicate that Claimant was not withheld from service until he was so notified by the contents of the letter dated June 15, 1989. The period of time from June 9 to and including June 15 clearly were times during which Claimant was on the payroll either receiving sick pay or vacation pay. The letter of June 15, 1989, withheld Claimant from service on that date and scheduled an Investigation to begin on June 22, 1989, which is within the time limits mandated by Rule 55. The Organization's contention to the contrary is rejected.

A review of the Investigation transcript does not reveal any entrapment on the part of the Carrier against Claimant. The actions taken by Claimant were done of his own free will and volition. His belated attempt on June 9, 1989, to seek the assistance of Carrier's counseling service, while commendable, does not mitigate his actions of June 8, 1989. It is regrettable that an eleven (11) year employee would place himself in a situation such as Claimant was found on June 8. However, this Board cannot, and will not in this instance, say that Carrier was excessive in its administration of discipline by dismissal for these proven Rules violations. Claimant held a responsible position in Carrier's operations. His use of a Company vehicle to transport a loaded gun while engaging in the unlawful act of purchasing marijuana for further distribution indicates his contempt for both the Carrier's Rules as well as his and other's well being. Carrier need not tolerate this type of situation. The Claim for reinstatement is rejected.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Peyer - Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1991.