

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25235
Docket Number MW-25203

Eckehard Muessig, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Seaboard System Railroad

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

(1) The dismissal of Trackmen A. Berry and C. Tullis for alleged violation of "Rule 16" was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement [System File C-4(13)-AB/CT: 12-39(82-1094) K3].

(2) The claimants shall be reinstated with seniority and all other rights unimpaired. Their personal records shall be cleared of the charge leveled against them and they shall be compensated for all wage loss suffered.

OPINION OF BOARD: The two Claimants herein took a drug screen test, and the results of these studies were positive. Following an investigation, the Carrier found that the Claimants had violated the Rule prohibiting employes on duty from using or being under the influence of any substance that may impair senses or alertness. It followed that both Claimants were dismissed from service.

The Organization argues on both procedural grounds and the merits. On the former, it contends that in its deliberations, the Carrier gave improper weight to written evidence which was not subject to cross-examination and, therefore, the Claimants were not afforded a fair trial.

With respect to the merits, it argues that the Claimants did not use marijuana while in a work status. Moreover, although the Claimants admitted to the use of marijuana on the evening before reporting to work, they were not under the influence while on duty the next morning.

Concerning the fairness of the proceedings, while the Organization's contentions are understandable we find that the Claimants were provided a fair hearing which comported with the essentials of due process.

Turning to the merits, the record reveals substantial evidence in support of the conclusion reached by the Carrier. The gravity of the offense and its potential effects on the safety of the individual, fellow employes, as well as the public, are well understood. We do not find the assessed penalty to amount to an abuse of the Carrier's discretion. Accordingly, the claim is denied.

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 Agreement was not violated.

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 31st day of January 1985.