

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25263
Docket Number MS-25319

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Joseph J. Mira
(
(Norfolk and Western Railroad Co.
(Lake Region)

STATEMENT OF CLAIM:

If and when an award is brought to agreement, I wish to be reinstated as a employee with all seniority and rights unimpaired, and all monies lost.

OPINION OF BOARD: The record shows that Claimant (the Petitioner herein) entered service in Carrier's Maintenance of Way Department on April 26, 1977. On May 22, 1981, he was notified to report for investigation on June 12, 1981, on the charge:

"***conduct unbecoming an employee in that you were charged with possession of cocaine (felony 4th degree charge amended in Sandusky Municipal Court, Wednesday, May 6, 1981, to a Misdemeanor, 3rd degree, at which time you were found guilty, fined \$250.00 and Court cost of \$15.00 and sentenced to ten (10) days in jail, which was suspended on condition of good behavior which is in violation of Rule 1714 of the N&W Safety Rules and Rules of General Conduct."

The formal investigation was conducted as scheduled and a copy of the transcript has been made a part of the record. On June 25, 1982, Claimant was dismissed from Carrier's service.

The record shows that Claimant was represented in the investigation by the Vice Chairman-Secretary Treasurer, Brotherhood of Maintenance of Way Employees. In the investigation Claimant's Representative objected to the use of a tape recorder to record the proceedings. We see no proper basis for such complaint. From our experience, the use of tape recorders to record investigations seems to be a common practice. See also Third Division Award No. 15890 and Second Division Award Nos. 9969 and 9973.

From our review we find that the investigation was conducted in a fair and impartial manner. Following Claimant's dismissal, the Claim was handled in the usual and customary manner on the property by the Maintenance of Way Organization, up to and including Carrier's Highest Designated Officer of Appeals, but failed resolution, resulting in Claimant progressing the Claim to this Board.

We agree with the Carrier that S. L. Britt (former Division Engineer) is not a proper Party to the dispute. The proper Parties to this dispute are the Claimant and the Carrier.

Carrier's Safety Rule 1714, referred to in the letter of charge, reads:

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

We find that substantial evidence, including the Claimant's statement, was presented at the investigation in support of the charge against Claimant. While the record shows that Claimant was in furlough status when notified to attend the investigation on May 22, 1981, and was in such status when dismissed on June 25, 1981, he did maintain an employer-employee relationship, and the Carrier was justified in terminating that relationship.

The possession, use of or trafficking in drugs are considered serious offenses in the Railroad Industry, usually resulting in dismissal. See Second Division Awards Nos. 8205, 8237 and 9996; Third Division Award Nos. 24728, 24525, 24608 and 23410.

The contention of Claimant that he was not familiar with Carrier's Safety Rule No. 1714 is not persuasive. As an Employee with about four years of service, we think it is reasonable to hold that Claimant had a responsibility to make himself knowledgeable of Carrier's Safety Rules.

There is no proper basis to disturb the discipline imposed by the Carrier.

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 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

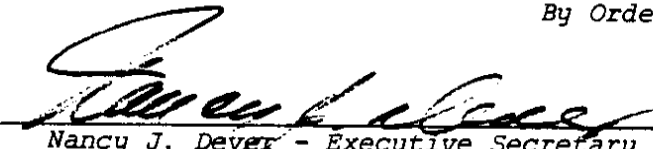
That the Agreement was not violated.

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 28th day of February 1985.