

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26332
Docket Number SG-26981

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (Western Lines).

On behalf of Signal Maintainer F. A. Dickie for reinstatement to service account of being dismissed from service for alleged violation of Rules 'G' and '801'. Carrier File E-A-L-430"

OPINION OF BOARD: Prior to the occurrence giving rise to the dispute herein, Claimant, with about sixteen years of service, was employed by the Carrier as a Signal Maintainer at Santa Barbara, California, with assigned hours 7:00 A.M. to 3:30 P.M.

The Carrier advises that on October 19, 1984, the Supervisor in charge of operations on Carrier's Coast District, which includes the station of Santa Barbara, received a telephone call shortly before noon that it appeared that Claimant may have been smoking marijuana in the Signal Shop at Santa Barbara. The Trainmaster telephoned personnel at Santa Barbara that he would arrive there about 2:30 P.M. to make inquiry into the matter. The Claimant departed before the Trainmaster arrived at Santa Barbara.

When Claimant next went on duty at Santa Barbara on October 22, 1984, he was interviewed by the Signal Supervisor and the Trainmaster. The situation that occurred on October 19, 1984, was discussed with the Claimant. He was instructed four times to go to a local hospital for a drug screen urinalysis, and each time he refused. On October 23, 1984, Claimant was instructed to appear for a formal Investigation at 10:00 A.M., October 29, 1984:

". . . to develop the facts and place responsibility, if any, in connection with your alleged use of marijuana while on duty or while subject to duty, for your allegedly being under the influence of marijuana while on duty on Company property on or about 11:55 AM, October 19, 1984, and your alleged refusal to give a urine specimen for a toxicological test as instructed on October 22, 1984, for which occurrence you are hereby charged with responsibility which may involve violation of Rule G, and 801 of the Rules and Regulations for Maintenance of Way and Structures, those portions reading:

Rule G: The use of alcoholic beverages, intoxicants or narcotics by employees subject to duty, or their possession, use, or being under the influence thereof while on duty or on Company property is prohibited.

Employees shall not report for duty under the influence of, or use while on duty or on Company property, any drug, medication or other substance, including those prescribed by a doctor, that will in any way adversely affect their alertness, coordination, reaction, response or safety.

Rule 801: Employees shall not be retained in the service who are . . . insubordinate . . ."

The Investigation was conducted as scheduled and a copy of the Transcript has been made a part of the record. We have reviewed the Transcript and find that the Investigation was conducted in a fair and impartial manner. In the Investigation Claimant stated that he had left his assignment early on October 19, 1984.

We find that the Carrier did produce substantial evidence in the Investigation that Claimant refused on four occasions on October 22, 1984, to provide a urine specimen for urinalysis. Claimant admitted that he smoked marijuana occasionally; admitted that he refused to submit to a urinalysis as instructed, but denied that he had used marijuana on the property on October 19, 1984.

We do not find substantial evidence to support that part of the charge alleging Claimant used marijuana on the property on October 19, 1984. However, Claimant's refusals to submit to a urinalysis as instructed constituted insubordination. We have held on numerous occasions that no employee may properly decide for himself the instructions that he will comply with and those that he will ignore. The Board must also take note of Claimant's testimony that he used marijuana occasionally. The use of, possession of, or trafficking in drugs are considered serious offenses in the railroad industry (Third Division Award 25263 and others cited therein). Claimant was notified of his dismissal from service on November 5, 1984. He was subsequently reinstated the first week of October, 1985. There is no proper basis for the Board to interfere with the discipline imposed.

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

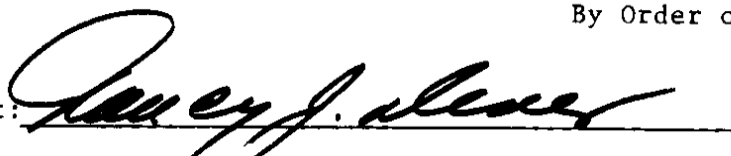
That the Agreement was not violated.

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 8th day of June 1987.