

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26419  
Docket Number SG-27130

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the  
Brotherhood of Railroad Signalmen on the Missouri  
Pacific Railroad Company (MP):

On behalf of J. R. Delaney, who was dismissed from service on July 16, 1985, account of the results of an investigation held on July 10, 1985. General Chairman file 85-12-UL. Carrier file: S-225-999."

OPINION OF BOARD: The record shows that Claimant entered the Carrier's Signal Department as an assistant Signalman at Jefferson City, Missouri, on September 11, 1984, and had about five months service at the time of the occurrence giving rise to the dispute herein.

On February 21, 1985, Claimant was assigned to Signal Gang No. 1128, working near Washington, Missouri. During the evening of that date, FBI agents arrived at the motel where Claimant was staying and took her into Federal custody for arraignment in connection with a Federal Grand Jury indictment, which the Carrier states emanated from Little Rock, Arkansas. Claimant was indicted, along with some eighty other people reported to be members of a motorcycle gang. According to newspaper clippings, made a part of the record, Claimant was charged with conspiracy, distribution of drugs, and illegal use of a telephone in drug dealings.

On February 26, 1985, a formal Notice of charge was issued to Claimant, scheduling a formal Disciplinary Hearing for 9:00 A.M., March 1, 1985, in the Trainmaster's office in Jefferson City, Missouri:

"...to develop the facts and place your responsibility, if any, for your allegedly being involved in the production and distribution of a controlled substance resulting in your apprehension and incarceration by the Federal Bureau of Investigation on February 21, 1985 while you were located at Washington, Missouri on Signal Gang 1128."

Claimant was also advised that she was being withheld from service pending results of formal Investigation.

The record shows that at request of a Local Representative of the Organization, the Investigation scheduled for 9:00 A.M., March 1, 1985, was postponed to 9:00 A.M., March 8, 1985, due to Claimant being incarcerated and unavailable. The Claimant was still unavailable on March 8, 1985, and the Investigation was again postponed, the Carrier contends indefinitely until a mutually agreeable date. On March 12, 1985, the Local Chairman of the Organization requested that Claimant be permitted to return to service pending Investigation. The request was denied.

The Investigation was conducted on July 10, 1985. A copy of the Transcript has been made a part of the record. Claimant was present at the Investigation and was represented.

It was developed in the Investigation that on June 28, 1985, in the United States District Court, Eastern District of Arkansas, Claimant entered a plea of guilty to "Misprison of felony in violation of 18 U.S.C. 4." The imposition of sentence was suspended, Claimant was placed on three years' probation, fined \$250.00, and ordered to undergo a drug aftercare program. A copy of the Court Judgment was made a part of the Investigation record. We consider the Court Order of June 28, 1985, as being directly related to the drug charge against Claimant - perhaps a less severe charge but still a felony. Claimant stated in the Investigation that she pleaded guilty to the "misprison of felony" charge on advice of her attorney. The Carrier could properly rely upon the court record.

Item 5 of Carrier's Conditions of Employment, which was read into the Investigation, reads:

"Item 5 - To familiarize myself with and to observe all rules and regulations governing the service to which I shall at any time be assigned; to maintain strict integrity of character; to faithfully observe the rules and/or policy governing the use of possession of intoxicating liquors or narcotics; and to perform my duties to the best of my ability."

On July 16, 1985, Claimant was advised of her dismissal from service.

This Board has often held that the possession of, use of, or trafficking in drugs are considered serious offenses in the railroad industry. (Third Division Award No. 25263 and others cited therein).

Based upon the entire record, we find that Claimant's dismissal was justified. We will deny the Claim without passing upon the procedural issues raised for the first time before the Board. The Board is an appellate tribunal and may only properly consider issues that were considered by the parties to the dispute in the handling on the property. New issues and new defenses may not properly be raised for the first time before the Board. In the handling on the property the Carrier discussed the merits of the dispute, but

took no exception to the manner in which the Claim was handled, or the timeliness of the handling. Neither may we properly consider the alleged report of Claimant's Probation Officer, made in September, 1985. (Third Division Award No. 25907).

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

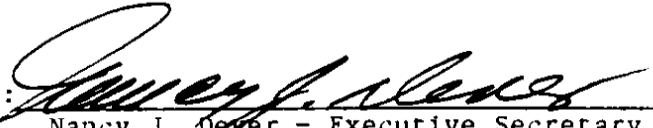
That the Agreement was not violated.

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 24th day of August 1987.