

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(New Orleans Public Belt Railroad

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

(1) The dismissal of Bridgeman Helper G. T. Ziegler for alleged '... violation of General Order 220.' because '... Drug Screen Test performed on June 3, 1985, revealed the use of marijuana, which affects alertness, coordination, reaction, response and safety....' was arbitrary, on the basis of unproven charges and without just and sufficient cause.

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

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.

Following an investigation conducted on August 20, 1985, into his alleged violation of General Order 220, dated March 31, 1971, Claimant was dismissed from service. The Order states that "The use or possession of alcoholic beverages, intoxicants, narcotics or any other substance that will adversely affect an employee's alertness, coordination, reaction, response or safety, while on duty, or when reporting for duty, is forbidden." Carrier alleged that Claimant tested positive for marijuana on June 3, 1985, in a series of audio, pulmonary, chest x-ray, and drug screen tests given all Huey P. Long Bridge employes. Claimant had allegedly also tested positive in an earlier test conducted on February 17, 1984. He was not disciplined for that incident, but was told that another test would be conducted at a later date. Claimant's past record includes a termination and a return to service on a last-chance basis on August 23, 1982.

In its Submission to this Division, the Organization has raised a number of questions about the reliability of the tests administered Claimant and the qualifications of those giving the tests. (Claimant's sample was subjected to a Cannabinoid Screen, the results of which were then confirmed by means of Thin Layer Chromatography.) From our review of the record, however, while it appears that there was some testimony at the investigation on what occurred when Claimant was tested, these matters were not addressed on the property. As we noted in Third Division Award 26670, involving the same parties, such issues must be handled on the property to be considered in the final stage of the appeals process. It is only in that way that the validity of the Organization's contentions can be tested.

In our review of the transcript, this Division finds that Claimant was afforded all procedural protections guaranteed by Agreement. Based on the results of the drug screen, Carrier had reasonable cause to believe that Claimant had used a substance that would adversely affect him. Under the circumstances, and given Claimant's past record, the discipline imposed was not excessive.

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 17th day of May 1988.