

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

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

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company (former Missouri Pacific [T & P]):

On behalf of Signal Maintainer R. B. Victoria, for reinstatement to service with all time lost and benefits restored, beginning June 16, 1986, and continuing until this dispute is settled, account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 50, when it failed to prove his guilt. Carrier file: 225-1069."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

The Claimant was dismissed from service on June 16, 1986, following an investigation into his alleged violation of Rule G. Marijuana was found in the pocket of Claimant's jacket. The jacket was on the seat of a Carrier truck that Claimant had been using.

At issue in this case is whether Carrier had substantial evidence of Claimant's guilt. Carrier maintained that it had because Claimant supposedly admitted to two agents that he owned the packet found in the jacket. The Organization argued that Carrier did not, given the fact that the truck was open and Claimant denied making any admission.

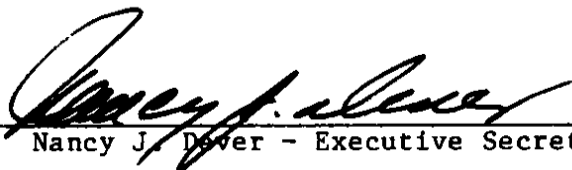
While the Board cannot determine that Carrier has fully met its burden in this instance, one is left with the suspicion that even if the marijuana in question did not belong to Claimant, he was consorting with people who were using the drug. Although dismissal from service is too severe, we cannot restore him to service with backpay. Given the fact that serious questions have been raised about Claimant's use of a substance that could impair his performance on the job, Carrier shall be granted the right to test Claimant at its discretion, on an unannounced basis, for a two-year period. Subject to the above condition, Claimant shall be restored to service with seniority and all other rights unimpaired, but without backpay.

A W A R D

Claimant sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March 1989.