

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(Southern Pacific Transportation Company (Eastern Lines)

STATEMENT OF CLAIM:

"CASE #1 - R. A. Brock, Jr., Dismissed 4/25/86
Carrier file 451-47-A

This is to request that Mr. Brock be compensated for all time lost as a result of the charges, and that all reference to this incident be removed from his personal record.

CASE #2 - R. A. Brock, Jr., Dismissed 5/16/86
Carrier file 451-27-A.

This is to request that these charges against Mr. Brock, Jr., be dropped and that all reference to this incident be removed from his personal record."

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 waived right of appearance at hearing thereon.

On April 18, 1986, Claimant was working his assignment as Third Trick Train Dispatcher in the HE&WT office, 11:00 P.M. - 7:00 A.M. At about 5:30 A.M., two Carrier officers observed Claimant seated at his desk with his chin in his hand, eyes closed, and head nodding from side to side. After watching him for a few minutes, the officers entered the room stating loudly: "Wake up, Brock." Claimant jumped to his feet, protesting that he was not asleep but that the floor mat caused his chair to rock and hence his head to nod.

The Carrier relieved Claimant from service pending Investigation, but before leaving the property Claimant signed a "Consent for Toxological Tests," agreeing to give a urine specimen for laboratory testing to determine the presence of drugs, alcohol or medication in his body. Claimant was then transported to Park Plaza Hospital where he gave a urine sample, following which he was sent home.

By notice of April 18, 1986, Claimant was summoned to an Investigation into a charge of sleeping on duty. Following the Hearing on April 22, at which Claimant appeared and was represented, Carrier found him guilty as charged and served notice of discharge for sleeping on duty. In the meantime, on April 24, 1986, Carrier received the laboratory test results, which found Claimant "positive" for cocaine on April 18, 1986. By notice of April 24, Claimant was summoned to another Investigation scheduled for April 28, 1986, into a charge of alleged cocaine usage and/or influence while on duty in violation of Rule G. Following several granted requests for postponements from Claimant and his Organization, the Hearing was held on May 12, 1986. By letter of May 16, 1986, Claimant was notified of his discharge for violation of Rule G. In early June 1986, Claimant was offered the opportunity to participate in Carrier's EAP for rehabilitation and possible restoration to service.

So far as the record shows, Claimant did not undergo rehabilitation to qualify for reinstatement consideration. He did file two (2) claims appealing his respective terminations of April 25, 1986, for sleeping on the job and May 16, 1986, for cocaine use in violation of Rule G. Those Claims were denied at all levels of handling on the property and eventually appealed to this Board.

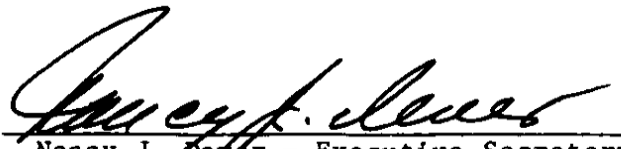
The Claims must be denied for lack of merit. The evidence overwhelmingly supports Carrier's conclusion that while on duty on April 18, 1986, Claimant was sleeping on the job and/or assuming a sleep-like position. Moreover, Carrier has proven that he was in violation of Rule G. Those charges were proven by substantial evidence of record in procedurally correct Hearings. There is no showing of double jeopardy or unfairness in those proceedings. The Awards of this Board are legion upholding Carrier decisions to dismiss employees proven culpable of either, let alone both, of these serious offenses.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1989.