

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

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

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

(1) The dismissal of Painter F. E. Heath, Jr., for alleged '... violation of General Order 220.' was without just and sufficient cause, on the basis of unproven charges, arbitrary and in violation of the Agreement.

(2) Mr. F. E. Heath, Jr. shall be restored to service with all remedies as prescribed in Rule 16, Paragraph (f) of the Agreement."

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 waived right of appearance at hearing thereon.

Following an off-duty injury, Claimant was required to take a physical exam prior to returning to work. This exam included a drug screen on which Claimant tested positive for marijuana with a reading of 27 ng/ml. Upon receipt of this information, Carrier dismissed Claimant effective May 4, 1988. Claimant exercised his right to a Hearing, which was conducted on May 24, 1988. The Carrier affirmed its decision by writing to Claimant on June 13, 1988.

At his Hearing Claimant denied using marijuana, but suggested that the positive test may be the result of passive inhalation during a party the Saturday prior to the test and an outdoor jazz festival on Sunday. The drug screen was conducted on Wednesday. In light of the time span between these events, it is not likely that Claimant's positive test could be explained by passive inhalation. The tests which Claimant had taken on his own more than a week after the Carrier's test have no evidentiary weight. In addition to being too distant in time to contradict the Carrier's test, the reports give no information with respect to cut-off levels. Based upon the evidence of record, we conclude that Claimant was in violation of General Order No. 220, Paragraph 14, which reads as follows:

"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."

The Organization has taken exception to the discipline on the basis that Claimant did not receive notice of the Carrier's decision within twenty (20) days of the May 24, 1988, Hearing. Rule 16(c) requires that the "...decision will be rendered within twenty (20) calendar days after completion of the hearing" (emphasis added). It is well established by this Board that the decision was rendered when it was mailed to Claimant. See Third Division Awards 10254, 13219 and 24530. As June 13, 1988, was the twentieth day following the Hearing, the decision was rendered on a timely basis.

The use of drugs by railroad employees is a matter of serious concern. Claimant was employed as a bridge painter, required to work at heights in excess of 200 feet. The Carrier has a right to expect that an employee in such a position will be able to perform his job in a safe manner, unaffected by drugs. Accordingly, the Carrier's action was neither arbitrary nor unreasonable.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of September 1989.