

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(  
(Kansas City Terminal Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10496) that:

CLAIM NO. 1

a. The Kansas City Terminal Railway Company acted in an arbitrary, capricious and unjust manner and in violation of Rules 19, 20, 21, 22, 23 and 24 among others of the Scheduled Agreement when it dismissed Russell B. House effective March 31, 1989.

b. The Company shall now be required to immediately reinstate Claimant R. B. House to service and compensate him for all lost wages including overtime, benefits and Health and Welfare costs that resulted from this improper termination.

CLAIM NO. 2

a. The Company acted in an arbitrary, capricious and unjust manner and in violation of Rules 19, 20, 21, 22, 23 and 24 among others of the Scheduled Agreement when it reaffirmed its dismissal of Russell B. House from its service effective March 31, 1989.

b. The Company shall be required to reinstate Claimant Russell B. House to its service and compensate him for all lost wages including overtime, benefits, Health and Welfare costs that result from this improper termination."

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.

Claimant was ordered to present himself for a physical examination. The examination included a drug screen which tested positive. On the basis of this result he was cited for an Investigation, which was held on March 16, 1989. Following the conclusion of the Investigation, on March 31, 1989, Claimant was notified that he was terminated. However, one day before Carrier's termination letter was issued, on March 30, 1989, Claimant was cited for another Investigation. The second Investigation was conducted on May 16, 1989. Under date of May 26, 1989, Carrier issued its decision reaffirming its previous dismissal. Both Claims were progressed on the property as provided in the Agreement. By Agreement between the Carrier and the Organization they were consolidated into one Docket for consideration by this Board.

We have examined carefully the transcripts of both Investigations and conclude that adequate evidence was developed in each to support the conclusion that Claimant was in violation of Carrier's Rule G (Claim No. 1) and Rules H and L (Claim No. 2), as charged. In fact, Claimant's own testimony supports this conclusion. We have also examined the transcripts, as well as the record of handling on the property, and conclude that Claimant's procedural and due process rights, as established by the Agreement, have not been breached so as to flaw the Investigation or the discipline assessed.

With regard to the level of discipline assessed, termination, it is noted that Claimant has been warned or disciplined on seven previous occasions for violations of the same Rules as that involved in the two Claims here. Accordingly, we are without a basis for effecting any modifications. The Claims will be denied.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1992.