

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10514) that:

(CARRIER'S FILE NO. TCU-D-3310; TCU FILE NO. 393-E90-910-D)

1. Carrier acted in an arbitrary, capricious and unjust manner, in violation of Rule 24 of the governing Agreement, when by letter dated January 19, 1990, it terminated from service Claimant, Mr. Randolph Legette.

2. Carrier shall now reinstate Mr. Legette with seniority rights unimpaired and compensate him for all time lost including but not limited to daily wages, overtime, and holiday pay had discipline not been assessed. This time is to commence from the time Claimant was withheld from service, and continue until he is reinstated.

3. Carrier shall now expunge the charges and discipline from Claimant's record.

4. Carrier shall now reimburse Claimant for any amounts paid by Claimant for medical, surgical or dental expenses to the extent that such payments would be payable by the current insurance provided by the Carrier."

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.

At the time of the incident at issue, Claimant was assigned to the position of Ticket Clerk/Baggage Clerk at Columbia, South Carolina. He resides in Rembert, South Carolina, and commutes approximately 50 miles to work. He holds a second job in Rembert, which involves performing services as a licensed Investigator for the community of Rembert in its anti-drug program. On the day in question, January 3, 1990, Claimant was driving a white van owned by the second employer, since his own vehicle was garaged for repairs. The white van was on occasion used as a stake-out van and for undercover contacts with informants and drug users.

At about 12:40 A.M. on January 3, 1990, while on his lunch break, Claimant was stopped by an undercover narcotics surveillance police unit in an area of West Columbia, South Carolina, known locally as "crack alley." Although the police found drug paraphernalia (a "crack" pipe) in the truck, and marijuana seeds, they charged Claimant with only a traffic violation. As a result of this, he returned to work considerably later than the allowed twenty-minute lunch break, at about 2:05 A.M.

On January 9, 1990, Carrier notified Claimant to report to a formal Investigation into the incident. Following the Investigation, Carrier dismissed Claimant in a letter dated January 19, 1990, for violation of Rules "G" and "O" of the National Railroad Passenger Corporation Rules of Conduct. Rules G and O read in pertinent part:

"[Rule G] 'employees subject to duty, reporting for duty or while on duty, are prohibited from possessing...intoxicants, narcotics or other mood changing substances....'
[Rule O] 'Employees must attend to their duties during assigned working hours. Employees may not be absent from their assigned duty, or engaged in other than Amtrak business while on duty without permission from their supervisor.'"

Had the Carrier presented convincing evidence of Claimant's possession or use of drugs during his work day, there would be no basis upon which to disturb Carrier's assessment of the ultimate penalty of dismissal. On the record before us, however, Carrier has not carried its burden of persuasion on that most serious portion of the charge against the Claimant. In testimony unrefuted on the record, the owner of the white van testified that the drug paraphernalia belonged to his own brother, who was an addict. Moreover, the testimony of the arresting Officer supports Claimant's testimony that at the time of the arrest he told the officer he did not use drugs and would willingly submit to a drug test to prove it. The fact that the Officer declined to have Claimant tested may not be used to impugn Claimant's veracity on that subject.

There is no question, however, that the second charge against Claimant, that he was away from his assigned duty without permission of his Supervisor, is amply supported by the record before us. Claimant showed exceedingly poor judgment in taking a van not his own into a part of town he admits


he was unfamiliar with on what was supposed to be a twenty minute lunch break. Nor is this the first time that Claimant's negligence and lack of judgment have exposed him to appropriate disciplinary action. See Third Division Award 28948. In all of the circumstances of record, the Board is convinced that Claimant's behavior warrants severe discipline, but the ultimate penalty is excessive. In light of Claimant's long record of employment, this Board will return him to service on a "last chance" basis without pay for time lost and all other rights and seniority unimpaired.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever, Executive Secretary

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