

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32011  
Docket No. SG-32347  
97-3-95-3-203**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Brotherhood of Railroad Signalmen**  
**PARTIES TO DISPUTE: (**  
**(CSX Transportation, Inc. (former Louisville and**  
**( Nashville Railroad)**

**STATEMENT OF CLAIM:**

**"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville & Nashville Railroad:**

**Claim on behalf of S. F. Ross for reinstatement to service with seniority unimpaired, with compensation for all time and benefits lost in connection with his dismissal from service and with the discipline removed from his record, account Carrier violated the current Signalmen's Agreement, particularly Rule 55 and Memorandum of Agreement S-010-88, when it failed to provide the Claimant with a fair and impartial investigation within ten days of the date he was withheld from service and imposed harsh and excessive discipline in connection with an investigation conducted on May 9, 1994. Carrier's File No. 15 (94-0022). General Chairman's File No. 94-215-INV-02. BRS File Case No. 9552-L&N."**

**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 employee 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.

This claim arose when on April 20, 1994, the Claimant was discovered slumped over in a Carrier truck parked along the side of a highway near St. Helens, Kentucky. Special Agent Phillips approached the vehicle and detected the odor of marijuana. He asked the Claimant if he needed help or if he was sleeping. The Claimant replied to the Agent allegedly slurring his speech. Agent Phillips also detected the odor of alcohol on the Claimant's breath. Upon further investigation, Agent Phillips discovered a brown prescription bottle filled with marijuana, another prescription bottle containing 14 marijuana roaches, ammunition, a .22 caliber Beretta automatic pistol, a .38 caliber Jennings pistol, a .25 caliber Lorcin automatic pistol, a .38 caliber Excam two-shot derringer, and two bottles, one containing 44% ethyl alcohol and the other 61% ethyl alcohol. In addition, outside of the driver's door were several ammunition casings and two more prescription bottles containing two more marijuana roaches.

The Claimant was taken to the Lee County Jail where he submitted to an alcohol/drug test. Claimant was released from the county jail on an unsecured \$2500 bond. Consequently, the Claimant was released from the Carrier's service pending the results of the drug screen. On May 5, 1994, the Claimant was notified that he had tested positive for marijuana on April 20, 1994.

On April 29, 1994, the Claimant was notified to appear for a formal Investigation to be held on May 9, 1994, to determine his responsibility, if any, in the violation of Operating Rule G, violation of Operating Rule 502, the unsafe operation of a company vehicle, and conduct unbecoming an employee.

It was determined that the Claimant was guilty as charged and by letter dated May 20, 1994, the Claimant was dismissed from the Carrier's service.

The Organization appealed the case arguing that the Carrier violated Rule 55 of the Agreement when it conducted the Investigation 19 days after the Claimant was removed from service on April 20, 1994.

This Board reviewed the procedural arguments raised by the Organization and we find them to be without merit. The Organization challenged the discipline in this case by stating that the Carrier failed to afford the Claimant his procedural rights set forth in Rule 55. That Rule requires that the Investigation be held within ten days of the date that the Claimant is charged with the offense or withheld from service pending such Investigation. In this case, the Claimant was taken out of service on April 20, 1994, not pending the Investigation, but pending the results of the probable cause toxicological test that was administered pursuant to the Rule G Bypass Agreement. Once the results of that test were received and reviewed by the Carrier, the Claimant was subsequently issued a letter of charges within the next ten days, on April 29, 1994, and then the Hearing was held within ten days after that as is required by the Rules. If the Claimant had been held out of service pending the Investigation on April 20, 1994, then the Organization's argument would have merit since the Hearing was not held until May 9, 1994. However, given the facts of this case, it is apparent that the Carrier complied with the Rules because it did not begin the Investigation process until the results of the test were back and it then issued its Notice of Investigation on April 29, 1994.

With respect to the substantive issue, this Board reviewed the evidence and testimony and we find sufficient evidence in the record to support the finding that the Claimant was guilty of violating Rule G and Rule 502, as well as, the offenses of operating a company vehicle in an unsafe manner and conduct unbecoming an employee.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

Given the extraordinary seriousness of the charges of which the Claimant was properly found guilty in this case, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it dismissed the Claimant from service for these Rule violations. Therefore, the claim must be denied.

### **AWARD**

**Claim denied.**

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

**Dated at Chicago, Illinois, this 6th day of May 1997.**