

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32595
Docket No. MS-31863
98-3-94-3-166

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Rogelio Cantu
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad)

STATEMENT OF CLAIM:

“ . . . Whether an offense committed prior to effective date rule (62) rule (607). But not resulting in conviction until after effective day of rule (62) rule 607 must be reported of such conviction. And whether an employee who convicted of delivery of contoll substance while off duty should be given the same oppportunity to attend drug rehabilitation as an employee who uses a drug or controlled substance while on duty.”

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.

On March 26, 1993 Claimant was issued a notice to report for an Investigation concerning his alleged criminal prosecution for illegal possession of a controlled substance on March 11, 1993. Following a postponement, the Hearing was held on April

16, 1993. By notice dated April 26, 1993, Carrier notified Claimant that he had been dismissed from service.

The Board has reviewed the transcript of the Hearing. There is substantial evidence to support the finding made on the property that Claimant was guilty as charged. Dismissal, under the circumstances presented was not arbitrary, capricious or excessive.

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 22nd day of May 1998.