

SPECIAL BOARD OF ADJUSTMENT NO. 280

PARTIES)
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
) ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

AWARD

STATEMENT OF CLAIM:

"1. Carrier violated the effective Agreement when North of Texarkana Track Laborer H. L. Williams was unjustly dismissed from service on June 11, 1986 and August 11, 1986.

2. Claimant Williams shall now be paid for all time lost commencing May 5, 1986, and on a continuing basis until such time as he is allowed to return to service, with vacation, seniority and all other benefits restored intact." (MW-86-31-CB, MW-86-44-CB-Williams; 53-932, 53-960)

OPINION OF BOARD:

Claimant was employed as a Laborer and was in the service of the Carrier since October 14, 1974. Claimant was withheld from service effective May 5, 1986 pending investigation for violation of Rule G due to his involvement as a passenger in the same accident discussed in Award No. 220 and the results of a drug/alcohol screen as was administered in that case. The initial tests (Enzyme Immuno Assay and Thin Layer Chromatography) administered on a urine specimen after consent was given by Claimant were positive for cannabinoids indicating the presence of marijuana. The Gas Chromatography/Mass Spectrometry performed on the specimen showed the presence of cannabinoids in the amount of 227 ng/ml. After investigation eventually held on May 28, 1986, Claimant was dismissed from service by letter dated June 11, 1986.

By letter dated June 4, 1986, Claimant was also charged with violation of Rules 607 and 806 resulting from his failure to report a personal injury allegedly sustained in the April 24, 1986 accident. After conclusion of another investigation on July 29, 1986, and

by letter dated August 11, 1986, Claimant was again dismissed on the basis of those Rules violations.

For the same reasons discussed in Award No. 218, we must reject the Organization's argument that Claimant was denied a fair and impartial hearing as a result of the multiple roles played by the Division Engineer who acted as the Charging Officer and the officer writing the dismissal letter. The independent review of appeals by other Carrier officers and the nature of the facts satisfies us that Claimant's due process rights were not prejudiced by virtue of the multiple roles played by the Division Engineer.

We do not view the issuance of the charges concerning the failure to report the injury as double jeopardy by virtue of the fact that Claimant was being withheld from service concerning the Rule G charge at the time the Rules 607 and 806 charges were issued. The Rules 607 and 806 charges were separate and independent from the Rule G charge and the facts concerning those charges did not become known to the Carrier until after it issued the Rule G charge and it received the May 22, 1986 letter from Claimant's attorney alleging that Claimant suffered an injury during the April 24, 1986 accident.

Nor can we find fault with the Hearing Officer's preclusion of questioning concerning other accidents. Under the facts of this case, we cannot say that Claimant was unduly prejudiced by those rulings since such questions were ultimately immaterial to issues raised by the charges.

Additionally, we must reject the Organization's argument that the investigation was used by the Carrier as a device to eliminate liability under the Federal Employers' Liability Act. No evidence in this record substantiates that assertion.

With respect to the alleged Rule G violation, for similar reasons set forth in Award No. 220, we find substantial evidence in the record to support the Carrier's conclusion that Claimant violated the provisions of that Rule. Sufficient documentation of the test results appears in the record. Further, there is nothing in the record to refute either the finding that Claimant's test showed a level of 227 ng/ml or the conclusion drawn from that finding.

Nor is there anything in the record to sufficiently cast doubt upon the reliability of the tests or the results. Keeping in mind that the review standard is one of substantial evidence in the record, and further considering the level of cannabinoids found and the broad wording of Rule G, we are satisfied that the Carrier has met its burden in this case.

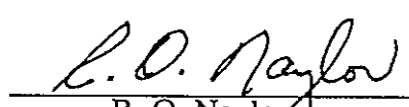
Further cause exists in this case to uphold the Carrier's decision to ultimately dismiss Claimant from service. Rule 806 requires the prompt reporting of all cases of personal injury. Claimant admittedly never made such a report. The first notice that the Carrier had that Claimant was injured in the April 24, 1986 accident came approximately one month after the accident as a result of a letter received from Claimant's attorney. The record discloses that after receipt of the attorney's letter, the Carrier wrote Claimant advising him of his obligation to promptly report any claimed injury. Nevertheless, Claimant did not respond. Under no circumstances can Claimant's conduct be considered in compliance with the requirements of Rule 806. The fact that Claimant considered himself in a dismissed status or felt that he should report the injury directly to an insurance company does not excuse his failure to comply with Rule 806, especially after Claimant was directed by the Carrier to make such a report after the Carrier received the letter from Claimant's attorney. Further, as of the time that Claimant refused to submit the report, Claimant's Rule G charge was under consideration and Claimant was not in a dismissed status. Therefore, substantial evidence exists in the record to support the conclusion that Claimant violated Rule 806.

Finally, we cannot say that dismissal was an excessive penalty for the Rules violations. Nothing in the record supports an argument that such an action was either arbitrary or capricious so as to be considered an abuse of the Carrier's discretion.

AWARD:

Claim denied.


Edwin H. Benn, Chairman
and Neutral Member


R. O. Naylor
Carrier Member


S. A. Hammons, Jr.
Organization Member

Tyler, Texas
August 24, 1987