

NATIONAL RAILROAD ADJUSTMENT BOARD

Form 1

FIRST DIVISION

Award No. 24264

Docket No. 43804

93-1-91-1-U-1661

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

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers  
(  
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim of Engineer C.A. Vanloo for immediate reinstatement to service with pay for all time lost and for the clearing of his record of any notation of this discipline."

FINDINGS:

The First 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 employe 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.

Claimant was employed by the Carrier as an engineer on the Jefferson City to Kansas City, Missouri runs.

On December 14, 1990, the Claimant was dismissed from service after it was determined at a formal Investigation that he was involved in the sale of cocaine to an undercover police officer. The Claimant eventually pleaded guilty to drug offenses before the Circuit Court of Cole County, Missouri.

The Organization filed a claim on behalf of the Claimant contending that: 1. There was no mention of the Carrier in the Jefferson City News Tribune article regarding the drug raid in which the Claimant was involved. 2. The Claimant changed his plea on the advice of his attorney solely to avoid going to prison and instead get probation. 3. The Carrier did not notify the Claimant of the charges within the ten-day requirement of the Agreement. 4. The Claimant has always tested negative to drug tests. 5. The

Claimant had not yet been sentenced nor convicted at the time the Carrier dismissed him from service.

The Carrier contends that the Claimant's telephone conversation with his supervisor was not proper notice to the Carrier in order to begin the ten day time limit for charging the Claimant. The Carrier argues that the Claimant was indicted on a Count 1 felony sale of cocaine and pleaded guilty to said charge. That, according to the Carrier, is a clear violation of Carrier's rules and warrants dismissal. Finally, the Carrier contends that the Organization's claim is without merit or Rule support.

This Board has reviewed the procedural argument raised by the Organization, and we find it to be without merit. The Organization claims that the Carrier representative was aware of the incident as early as November 27, 1990, when the Claimant called his supervisor at home. The Organization claims that the Agreement requires that all charges must be noticed to an employee within ten days from the time a Carrier Officer authorized to order the Investigation has been reasonably informed of the incidents to be investigated. However, the Organization has not presented sufficient proof that the Claimant thoroughly informed his supervisor of the nature of the wrongdoing which would give rise to the beginning of the ten-day period. This Board finds that the telephone conversation between the Claimant and his supervisor did not constitute proper notice to the Carrier in order to begin the ten-day time limit for charging the Claimant.

Instead, the record reveals that the Carrier gained full knowledge of the incident when the Superintendent was notified by the special agent on December 13, 1990, and told that the Claimant had pleaded guilty to a drug offense. The Carrier then served the Notice of Investigation on December 14, 1990, well within the ten-day limit as set forth by the Agreement.

With respect to the merits, this Board finds that the Carrier has presented sufficient evidence to support the finding that the Claimant was guilty of Rule violations subjecting him to discipline. The record reveals that the Claimant pleaded guilty to felony sale of a controlled substance, namely cocaine, on November 16, 1990. Although the Claimant contends that he did so on the advice of his attorney and solely to avoid going to prison, the fact remains that the Claimant pleaded guilty to a drug offense. Once the Carrier received appropriate notice of this, it took action to discharge him, and this Board cannot find that the action taken by the Carrier was improper.

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 actions to have been unreasonable, arbitrary, or capricious.

In the case at hand, the Claimant was found guilty of the sale of drugs; and, given the nature of his employment and the policies which this Carrier wants to carry out relating to drugs, this Board cannot find that the Carrier's action in terminating his employment was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of First Division

Attest: Catherine Loughrin  
Catherine Loughrin Interim Secretary to the Board

Dated at Chicago, Illinois, this 8th day of November 1993.