

The Second Division consisted of the regular members and in addition Referee Leonard K. Hall when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
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(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Company's action in dismissing Mr. K. A. Marsh on November 15, 1983, was harsh, out of proportion, excessive and constituted an abuse of discretion.
2. That accordingly, the Missouri Pacific Railroad Company restore Mr. K. A. Marsh to service--
 - (a) with full seniority rights
 - (b) compensation for all lost time
 - (c) medical benefits, and all other benefits he would be entitled to as an employee of the Missouri Pacific Railroad Company.

Findings:

The Second 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.

The Claimant, employed as Laborer with five years of service was given notice on November 8, 1983 to report for formal investigation on November 11, 1983 to develop the facts and place his responsibility, if any, in connection with conducting himself in a manner unbecoming an employe when arrested for possession with intent to deliver marijuana, conspiracy to distribute and possession of cocaine on March 21, 1983, and subsequent guilty plea for possession of marijuana and intent to deliver in Circuit Court of Pulaski and Perry Counties, 6th Judicial District, 5th Division, State of Arkansas on September 26, 1983, resulting in being sentenced to four years probation on October 25, 1983.

The notice informed him that he was pulled out of service November 8 pending outcome of the investigation.

The investigation was conducted as noticed. Thereat he was represented by his Organization Representative and had no witnesses present.

On November 15, 1983 the Claimant was dismissed from the Carrier's service for conducting himself in a manner unbecoming an employe of the Carrier when he was arrested (for the reasons as stated in the notice to report for the hearing), violation of General Rule N of the Uniform Code of Safety Rules and Item 10 of Conditions of Employment.

Each Rule reads in full:

Rule N:

"Employees must not enter into altercations, play practical jokes, scuffle or wrestle on company property. Employees must not be: 1. careless of the safety of themselves and others, 2. negligent, 3. insubordinate, 4. dishonest, 5. immoral, 6. quarrelsome or otherwise vicious."

Item 5 was mistakenly referred to as Item 10, where it was Exhibit 10. The essence of Item 5 was read into the Transcript at the time of the hearing. In full it is prefaced,

"In consideration of my employment I hereby agree:

"5. To familiarize myself with and to observe all rules and regulations governing the service to which I shall at any time be assigned; to maintain strict integrity of character; to faithfully observe the rules and/or policy governing the use or possession of intoxicating liquors or narcotics; and to perform my duties to the best of my ability."

The Organization initially contends that the Claimant was not charged with violating any of the Carrier's rules and that termination for violation of General Rule N and the condition of employment item was harsh, excessive and an abuse of discretion. Its contention being that neither rule applies to employes who are off duty, and Claimant was not charged in the hearing notice with any rule.

It is not necessarily required that rule violations be cited in the charges for the rules find their application as the facts develop during the hearing.

On duty or off duty, an employe known to have been found to be, and, subsequently admitted to have been, in possession of marijuana with intent to deliver clearly represents conduct unbecoming an employe. Such conduct adversely affected the employer-employe relationship.

Central and persuasive in this dispute is that the Claimant testified, as shown in the Transcript of the hearing and in the Exhibit made a part thereof, that he entered a guilty plea in the Circuit Court to prevent the charges against him from being heard by a jury.

Further proceedings were stayed and he was placed on probation for four years with the further understanding, which he acknowledged with signature, that if found to have violated the condition that he refrain from violating any law (Federal, State or Local) punishable by imprisonment he could be sentenced from four to ten years in prison and fined \$10,000.


The Claimant admitted the material elements of the charges against him. Even if the Carrier had failed in its burden of proof, which is not a fact, the admission and subsequent request for consideration of continued employment by the Claimant removed the necessity of proof of the charges. The claim will be denied in its entirety.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1985