

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(Southern Pacific Transportation Company (Western Lines))

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (SPTC (WL)):

Claim on behalf of S. P. Green for reinstatement to service with all time lost and benefits restored, account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 59, when in letter of December 17, 1986, it dismissed him without affording him all the rights of the Agreement. Carrier file SIG-LA-87-G."

FINDINGS:

The Third 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.

Claimant signed a "Conditional Reinstatement" on March 25, 1985, agreeing to reinstatement without compensation and to additional terms. Of these, Claimant agreed to "totally abstain from alcohol and other drugs" and to "submit to random unannounced alcohol and/or drug tests." Claimant signed the Conditional Reinstatement which allowed his return to duty. Failure to continually meet the terms of the Reinstatement allowed Carrier to return Claimant to dismissed status.

By letter dated December 17, 1986, Claimant was notified that the random urinalysis he took on December 10, 1986, showed positive for marijuana and he was therefore returned to dismissed status.

This Board is asked to consider whether the Claimant was denied his Agreement rights as provided by Rule 59 when he was dismissed without a fair and impartial Investigation. The Organization does not take issue with the fact that Claimant signed the Conditional Reinstatement, took the urinalysis test, or even that the results were positive, although it disputes that such evidence can be accepted outside the framework of an Investigation. It is the position of the Organization that Rule 59 is explicit and requires a formal Investigation before Claimant can be dismissed.

It is the Carrier's position that Claimant was returned to duty by the conditions of the signed March 25, 1985 Conditional Reinstatement Agreement. When Claimant failed to comply with the Agreement, his return to dismissed status was a self executing result if Carrier so decided. It is the Carrier's position that no Investigation was required by the Agreement.

The sole issue before this Board is whether under these circumstances the Claimant can be dismissed from Carrier's service without an Investigation. There are two Agreements before this Board. Rule 59 clearly requires an Investigation and states in part that "an employee...shall not be disciplined or dismissed without a fair and impartial investigation." The Conditional Reinstatement Agreement allows the employee who has been dismissed to return to duty and has no language which waives a future Investigation.

We conclude that the Claimant was dismissed with the protection of his rights afforded by Rule 59, either by an Investigation or waiver thereof. We are asked herein the question of whether the same Rule affords Claimant an Investigation when he is returned to dismissed status for violating the signed Conditional Reinstatement Agreement. The signed Agreement between the Claimant and Carrier requires mutual rights and guarantees. The Carrier agreed to return Claimant to work and Claimant agreed not to use drugs. We find that Claimant's violation allows Carrier to return him to dismissed status without an Investigation, as Claimant had already been dismissed, making Rule 59 inapplicable.

This Board must always assure itself that its interpretations protect the Agreement rights of the parties. We point to Special Board of Adjustment No. 18, Decision No. 5750 under similar circumstances wherein the Neutral stated:

"the Carrier's right to take future disciplinary action is not unchecked. The Carrier must have a factual basis for their action and the Organization must have a vehicle to challenge those actions."

The Board holds that Rule 59(a) is not the proper vehicle in that a return to dismissed status between Claimant and Carrier is not the same as dismissal. Rule 59 contemplates an Investigation prior to discipline or dismissal. As Claimant had already been dismissed there is nothing in the language of Rule 59 that is applicable. By signing the Conditional Reinstatement Agreement the Claimant had no additional Agreement rights under Rule 59 to an Investigation before being returned to dismissed status. Claimant has been returned to dismissed status for violation of a signed Conditional Reinstatement Agreement.

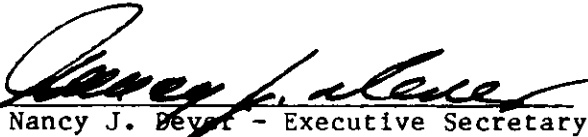
The Organization has a right to demand in each case that the return to dismissed status is based on fact. The Carrier must have the facts to support its actions. Herein, because the facts are in the record, the Carrier's action was fully warranted (Public Law Board No. 3991, Case No. 31; Public Law Board No. 3783, Award 77; Public Law Board No. 964, Award No. 720).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of April 1990.