

The Second Division consisted of the regular members and in addition Referee Arthur T. Van Wart when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International
(Association
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(Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

- 1 - That under the Current Agreement, Sheet Metal Worker Thomas E. Doolin was unjustly suspended from service February 20, 1975, and unjustly discharged from service on March 20, 1975.
- 2 - That accordingly, the carrier be ordered to;
 - (a) Re-instate Sheet Metal Worker Thomas E. Doolin to the service with all rights unimpaired, including seniority, vacation, health and welfare benefits and life insurance.
 - (b) Compensate Sheet Metal Worker Thomas E. Doolin for all lost time account being unjustly suspended and unjustly discharged from the service.

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 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 waived right of appearance at hearing thereon.

Claimant was regularly assigned as a sheet metal worker at Carrier's Russell Locomotive Shops, Russell, Kentucky. As the result of an 11:30 a.m. raid on Claimant's house, during his off duty hours, on February 18, 1975, by Federal, State and County law enforcement agents. Claimant was arrested. Said raid netted boxes full of pipes and other smoking apparatus, several stalks of home grown marijuana, marijuana seeds, a test kit for cocaine, several pairs of surgical scissors, and an envelope marked "waste not, want not" containing a large number of marijuana butts. Police described the seizure of marijuana as the largest in the history of Boyd County, Kentucky. The police also found in Claimant's home, a chain saw and an arc welder, both of which had been previously reported as stolen.

Claimant was arrested and charged with trafficking in marijuana, knowingly receiving stolen property and grand larceny. The latter two charges were later dropped. Claimant was incarcerated from February 18, 1975 until February 19, 1975 at which time he was released on a \$3,000 bond. The entire matter was reported in the February 19, 1975 issue of the Ashland Daily Independent newspaper.

Claimant, as a result thereof, was removed from service pending an investigation. He was given notice of an investigation to be held March 5, 1975 charging Claimant "with responsibility in connection with conduct unbecoming an employee" which resulted in his arrest on February 18, 1975, and confinement in jail as a result thereof. Carrier, on the basis of the evidence adduced thereat, concluded that Claimant was guilty as charged. He was dismissed from service as discipline therefor.

The Board finds that Claimant was accorded a fair hearing as prescribed by Rule 37. Notice was promptly sent Claimant to allow him sufficient advance time to prepare an adequate defense. Claimant was present at the investigation. He was represented by three committeemen. Claimant faced his accusers and he participated in the cross examination of witnesses. Claimant exercised his right of appeal. It was not error for Carrier to have refused a postponement request, made at the March 5, 1975 hearing, pending the outcome of Claimant's court trial. Aside from the untimeliness of the request, there was no linkage between the two proceedings. Carrier's investigation was an industrial proceeding held to determine whether Claimant's conduct was such as to make him an undesirable employee. While the other was a criminal proceeding to determine whether Claimant's actions had in fact violated a statutory code prescribed for the protection of society. Rule 37 permits suspension in proper cases. This was such a proper case.

There was sufficient testimony adduced, including Claimant's admission as to the trafficking in marijuana, to support Carrier's conclusion as to Claimant's guilt of the charge of conduct unbecoming to an employee. The record reflects that Claimant and his wife withdrew their plea of not guilty to the first count of the indictment, to wit, trafficking in marijuana, and thereafter entered a plea of guilty. Thus, the situation was not one involving mere possession or simple use of marijuana, but rather one of trafficking therein. It must therefore be concluded that Carrier acted reasonably and properly upon the evidence elicited.

The record impells the conclusion that the Board should not substitute its judgment for that of Carrier. Carrier is the better judge as to the standards of conduct which it expects of its employees. Here, such standard is not shown as being unreasonable, nor has Carrier been shown to have acted arbitrarily, capriciously or unreasonably in the exercise of its judgment. This claim will be denied.

Form 1
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Award No. 7678
Docket No. 7483
2-C&O-SM-'78

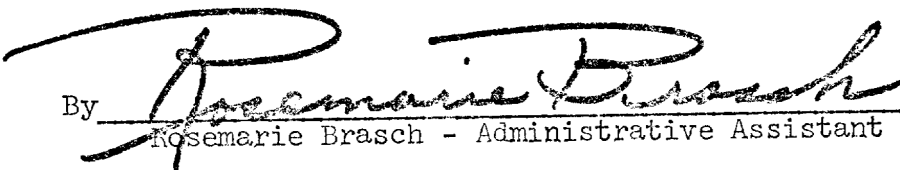
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of September, 1978.