

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 76, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Blacksmiths)
(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. That, in violation of the current agreements, Welder Helper J. L. Marinacci was unjustly dealt with when on date of July 29, 1977, was assessed a dismissal from service of the Carrier.
2. That, accordingly, the Carrier be ordered to return Mr. Marinacci to service immediately with:
 - (a) All seniority rights unimpaired.
 - (b) Compensation for all lost time at the prevailing rate of pay, plus 6% per day until date of payment.
 - (c) Make him whole for all vacation rights.
 - (d) Pay all premiums for hospital, surgical, medical and dental benefits for all time held out of service.
 - (e) Pay the premiums for group life insurance for all time held out of service.
 - (f) Be allowed all other benefits that he would have been entitled to had he not been removed from service.
 - (g) Remove the discipline from the record.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Following an investigation held on July 21, 1977, Claimant was dismissed from service having been found guilty of smoking or being in possession of marijuana while on duty, in violation of Rule G. It is noted that ten employees were charged and jointly investigated and as a result three employees, including Claimant, were dismissed. Further Claimant was also charged with certain actions with respect to the witnesses in this dispute; that matter was docketed as Docket No. 7764 and was dealt with in Award 7874 in which the Claim was sustained.

First it must be noted that Carrier asserts that the instant dispute is identical to that in Award 7874 and that award must be binding and this claim dismissed. While we understand the position taken by Carrier we do not agree with the conclusion reached; this dispute is based on separate charges and a separate investigation than that contained in Docket 7764 and must be dealt with separately.

This Board has examined the transcript of the investigation in this dispute with great care in an effort to determine whether the evidence contained therein was sufficient to support Carrier's conclusion that Claimant was guilty. We have found that the testimony of key witnesses was inconsistent, confusing and in some instances contradictory. A number of important Carrier witnesses testified that statements given to Carrier police officers were false and coerced. The testimony of Carrier's most important witness, Darrell Riva, an employee hired for the purpose of seeking out other marijuana users, was secured on threat of turning him over to the State Police unless he turned informer. As the Board in Award No. 51 of Public Law Board No. 1844 stated (dealing with the same investigation):

"Even if the genesis and bona fide of Riva's testimony were not so questionable, review of the transcript shows that his testimony itself is inconsistent, contradictory and unreliable. The uncorroborated testimony of a self-confessed marijuana user as to events occurring while he was on a marijuana high...does not measure up to our notions of substantial and convincing evidence."

We must conclude, therefore, that Carrier's finding of guilt was not supported by substantial credible evidence of record. For that reason, the Claim must be sustained. We shall direct that Claimant be reinstated with seniority rights unimpaired, with compensation for all time lost and that the disciplinary action be removed from his record.

A W A R D

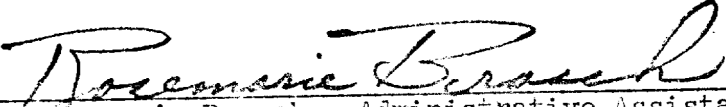
Claim sustained with the remedy indicated above.

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Award No. 8097
Docket No. 7885
2-C&NW-BK-'79

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 27th day of September, 1979.