

The Second Division consisted of the regular members and in addition Referee Barbara W. Doering when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(Burlington Northern, Inc.

Dispute: Claim of Employes:

1. Under the current controlling Agreement, Mr. J. L. Heimbouch, Laborer, Alliance, Nebraska, was unfairly dealt with when suspended from service of the Burlington Northern, Inc., from May 8, 1980 through June 6, 1980, inclusive, and a mark placed on his personal record.
2. That, accordingly, the Burlington Northern, Inc. be ordered to pay Mr. J. L. Heimbouch for all time lost at a pro rata rate and remove the mark from his personal 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 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 J. L. Heimbouch was suspended for 30 days for possession of marijuana in violation of Rule "G". The marijuana was allegedly found in his car in Carrier's parking lot. Two marijuana seeds on the front seat were spotted by security personnel through the window. Since Claimant had been asked to work overtime he had given his keys to the other members of his car pool and when they approached the car, they were asked by the security personnel for access and permission to search it.

The parties disagree as to the propriety of the search, but in view of the other circumstances of the case that particular issue is not central to a determination on the merits and will therefore not be addressed by the Board.

In addition to the two seeds on the front seat, the search revealed: seeds scattered in the back seat and some in the ash tray; the bowl of a marijuana pipe under the front seat; burned marijuana seeds on the back floorboards; a bong pipe and a glass pipe in a garbage bag in the trunk; and marijuana inside a tape box -- which could be seen if you opened the box.

The Board notes that the record is exceedingly vague as to the actual presence of marijuana -- as opposed to merely seeds and paraphernalia associated with its (prior) use. Although Officer Jordan stated that marijuana could be seen inside the tape box, it is unclear whether he was referring to merely traces of marijuana or some usable quantity. Further there is no evidence of verification of the substance.

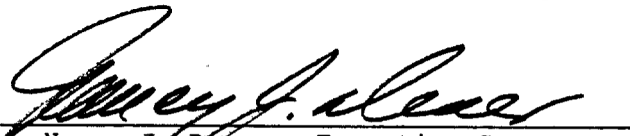
While the Board certainly does not condone the bringing of any narcotic onto Carrier property and recognizes that a proven violation of Rule "G" warrants serious penalty, even including discharge, the Board is not persuaded in this case that Carrier met its burden of proof in establishing the actual presence, and therefore possession, of the drug on Carrier property. With so serious a charge the evidence must be clear and convincing, and verification of the presence of a specified amount of marijuana is conspicuous by its absence in this case. In view of the lack of specific evidence with respect to the presence of the substance, discipline for its possession cannot be upheld. Claimant will be made whole for lost wages during period of suspension.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of March 1985.