

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx Jr. when award was rendered.

Parties to Dispute: ( System Federation No. 106  
( Railway Employees' Department  
( A.F.L. - C.I.O. "Carmen"  
(  
( The Washington Terminal Company

Dispute: Claim of Employees:

1. That under the current agreement, Carman Apprentice, M.H. Payne Jr., was unjustly dealt with when he was suspended from the service on April 8, 1975 and subsequently dismissed from the service of the Washington Terminal Company effective April 25, 1975.
2. That accordingly the Washington Terminal Company be ordered to return Carman Apprentice, M.H. Payne Jr., to the service of the Carrier with seniority and vacation rights unimpaired and compensate him for all time lost since April 8, 1975.

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, an employe of six weeks' service, was dismissed by Carrier for his actions on April 8, 1975, in violation of Rule G, which states:

"The use of intoxicants or narcotics by employees subject to duty is prohibited. Being under the influence of intoxicants or narcotics while on duty, or their use or possession while on duty is prohibited."

According to testimony, the Car Foreman clearly observed Claimant and another employe "smoking something with yellow paper on it."

in a car where the two employees had no reason to be in the course of their duties. The Car Foreman further testified that he recovered the yellow paper being smoked by the other employee, and this paper was later proved to have contained marijuana. The yellow paper observed in the Claimant's possession was not recovered. Claimant's defense in testimony was that there was a single piece of paper, handed by Claimant to the other employee.

This Board recounts this testimony to affirm its belief that Claimant's explanation was not a credible one, nor was it regarded as credible at the full and fair investigation which was conducted prior to Claimant's dismissal. Based on the foregoing, this Board has no reason to interfere with the conclusions drawn by the investigation and finds that the penalty exacted was appropriate to the violation. The fact that the cigarette which Claimant was smoking was not recovered is insufficient to set aside the Carrier's decision, the Car Foreman's testimony being clear, without apparent prejudice, and unshaken.

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  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of November, 1976.