Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 8052
SECOND DIVISION Docket No. 7897
2-SLSF-FO-'79

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. 22, Railway Employes' Department, A. F. of L. - C. I. O. (Firemen & Oilers)

St. Louis-San Francisco Railway Company

Dispute: Claim of Employes:

1. That Mr. S. D. Anderson was unjustly dismissed from the service of the St. Louis-San Francisco Railway Company on August 31, 1977 on charges of alleged possession of narcotics while on his assigned duty at the Springfield Diesel Shop at approximately 3:15 A. M., August 15, 1977. That the action of said Company was unfair, unjust and unreasonable.

2. That accordingly, the St. Louis-San Francisco Railway Company compensate Laborer S. D. Anderson, at the pro rata rate of pay for each work day beginning August 31, 1977, until he is reinstated to service and in addition receive all benefits accruing to any other employee in active service, including vacation rights and seniority unimpaired. Claim is also made for Laborer S. D. Anderson, for his actual loss of payment of insurance on his dependents and hospital benefits for himself, and that he be made whole for pension benefits including Railroad Retirement and Unemployment Insurance, and in addition to the money claimed herein, the Carrier shall pay Mr. Anderson an additional sum of 6% per annum compounded annually on the anniversary date of said claim.

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 herein was employed as a Laborer on the Midnight to 8:00 a.m. shift, at the Diesel Shop, Springfield, Missouri. He was first employed by Carrier on October 6, 1976, removed from service shortly thereafter and rehired on January 15, 1977. He was suspended from service August 15, 1977 for possession of marijuana while on duty at approximately 3:15 A.M. Following an investigatory hearing, Claimant was dismissed on August 31, 1977.

Carrier raised a number of procedural issues in its submission to this Board; however, in view of our findings on the merits, no purpose could be served in discussing those items. The two issues we shall address are whether or not the Carrier was justified in its finding Claimant guilty of the charges and whether the penalty was appropriate.

At the investigation two Carrier Special Agents testified that they removed a plastic bag containing two grams of marijuana, some cigarette papers and a pipe with a metal screen in it and a charred substance which appeared to be marijuana, from Claimant's car in the Carrier parking lot. Claimant, in his testimony stated that he had one "joint" in the car which had been left there by a female companion. Claimant's car had been searched by the agents in a search for stolen Carrier property since there had been a series of thefts in that area.

Carrier's hearing officer credited the testimony of the two Special Agents (corroborated by Claimant's foreman) and did not believe Claimant's version of the incident. It is well established that credibility findings are beyond the purview of this Board and must be left to the hearing officer. Thus, Carrier was amply justified in its conclusion that Claimant had a drug in his possession on the night in question, in violation of Rule G.

With respect to the penalty of dismissal, it cannot be said that the Carrier was arbitrary or discriminatory in its insistence on discharge. It is well recognized that Rule G violations are considered to be extremely serious in this industry and usually warrant dismissal. We have no basis for interfering with Carrier's determination of the appropriate penalty.

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 15th day of August, 1979.