

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: { System Federation No. 16, Railway Employees'  
                          { Department, A. F. of L. - C. I. O.  
                          { (Carmen)  
                          { Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That under the controlling Agreement Carman K. E. Lurry was unjustly dismissed from service on February 9, 1978, as a result of an investigation held January 13, 1978, at South Lorain, Ohio.
2. That the Norfolk and Western Railway Company be ordered to return Carman K. E. Lurry to service, compensate him for all time lost beginning February 9, 1978, make him whole for all seniority and vacation rights, and all other rights and privileges he would have obtained had he not been unjustly dismissed.

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.

Claimant was dismissed for possession of marijuana while on duty.

At about 10:00 A.M. on the day in question, Claimant was observed by his Foreman rolling a cigarette. The Foreman testified at the hearing as follows:

"I asked (Claimant) if he was rolling what I thought he was. He didn't answer. ..."

Claimant was instructed to accompany his Foreman to the office to discuss the matter further, and in the presence of both the Foreman and the General Foreman, voluntarily admitted he was rolling a marijuana cigarette. The General Foreman testified that when he questioned Claimant in his office, in the presence of Claimant's Foreman, Claimant stated that he had "three or four joints" and that he was not going to lie about it.

Claimant testified he had marijuana in his possession when questioned by the two supervisors but added: "They wanted to hear marijuana and I told them marijuana".

Petitioner contends that Carrier failed to carry the burden of proof that Claimant actually had marijuana in his possession, citing that the alleged substance was never examined nor confiscated by Carrier officials, and that Carrier's action is based on speculation and hearsay.

In light of the statements of both supervisors that Claimant told them he had marijuana in his possession; their statement (confirmed by Claimant at the hearing) that he told them he was not going to lie about it; and Claimant's direct testimony that he voluntarily told them he had marijuana in his possession, we must accept these statements as reflecting the actual situation.

We have no basis for questioning the credibility of the supervisors' testimony. We have the corroborating direct testimony of Claimant that he told the supervisors that the substance he had in his possession was marijuana. He admitted his guilt.

Award No. 64 of PLB 1582 held that:

"... in this case the claimant admitted his guilt at the investigation. Therefore, it was not necessary to establish the claimant's guilt. The use and/or possession of marijuana by a railroad employee is a very serious offense. It is dangerous to fellow employees and to the public as well."

We are constrained to follow the principle enunciated in this decision and, accordingly, we will deny the claim.

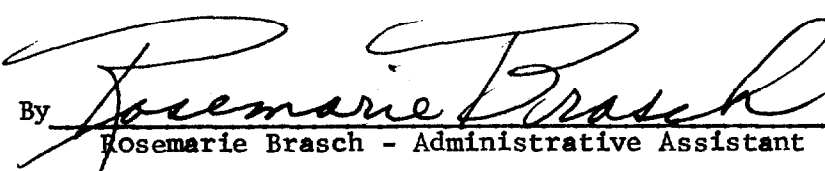
A W A R D

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 23rd day of July, 1980.