

The Second Division consisted of the regular members and in addition Referee Francis X. Quinn when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Southern Railway Company

Dispute: Claim of Employees:

That the Southern Railway System dismissed Student Electrician R. N. Scott from service without just and sufficient cause and deprived him of his right to earnings from June 24, 1978, until such time as he is restored to service.

That accordingly, Southern Railway System be ordered to restore Student Electrician R. N. Scott to service with seniority rights unimpaired and compensated for all wages lost commencing with the date of his discharge June 24, 1978, and continuing thereafter until such time as he is restored to service.

That the Southern Railway System be ordered to make Student Electrician R. N. Scott whole with respect to all rights, privileges and benefits associated with his railroad employment, such as, but not limited to vacation, health and welfare, and insurance benefits.

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 were given due notice of hearing thereon.

Critical to the resolution of the instant dispute is an examination of the events leading to Claimant's dismissal insofar as the time limits of Rule 34 are concerned. The following is a chronology of these events:

May 17, 1978 - J. L. Gregory, Asst. Manager, Diesel Shops received the second of two anonymous phone calls alleging that Claimant Scott was selling marijuana on Company property;

May 20, 1978 - Claimant emptied his locker in the presence of Asst. Manager Gregory, Special Agent Glover and Mr. Dempsey, at which time there was found a bag containing two bags of a substance wrapped in cellophane; Chattanooga City Police were called and

placed Claimant under arrest and in addition the police took the two bags and stated that they would be sent to the Department of Safety Toxicology Lab to be analyzed;

- June 22, 1978 - Messrs. Gregory and Glover were given a copy of a report from the Lab which stated that the bags contained 49.0 grams of marijuana;
- June 24, 1978 - Preliminary investigation was held in accordance with Rule 34(b) at which time the Claimant requested to be represented by Mr. W. P. Wells;
- June 26, 1978 - Claimant was advised that as a result of the preliminary investigation he was dismissed from the Carrier's service;
- June 27, 1978 - Formal investigation was requested in Claimant's behalf;
- July 7, 1978 - After request for postponement was granted the Organization, formal investigation was held on July 7, 1978, with Claimant present and represented;
- July 14, 1978 - Claimant was notified that he was found guilty of having 49.0 grams of marijuana in his possession on May 20, 1978, and that his dismissal would remain in effect.

The pertinent provision of Rule 34 which is at issue is the following sentence in paragraph (a):

"No charge shall be made involving any matter of which the carrier officers involved have had knowledge for more than thirty (30) days."

Rule 34 of the Agreement between the Carrier and its electricians represented by the International Brotherhood of Electrical Workers, enumerates all the rights to which an electrician is entitled in discipline cases.

The Organization throughout the handling of this case has contended that the Carrier violated the time limit provisions of Rule 34(e). That rule provides that "no charge shall be made involving any matter of which the carrier officers involved have had knowledge for more than thirty (30) days." The record indicates there was no preliminary investigation on May 20, 1978. On the night of May 20, Assistant Manager Gregory found a substance he suspicioned to be marijuana. However, this fact was not confirmed until the Tennessee Department of Safety Crime Laboratory report was received on June 22, 1978. Following receipt of that report, the Carrier obtained the "knowledge" referred to in Rule 34 and conducted a preliminary investigation two days thereafter. Therefore, the claimant was given a timely preliminary investigation within the meaning of Rule 34, and the Organization's contentions to the contrary are without merit.

The evidence in the case indicates that the claimant was guilty of conduct unbecoming an employee when he was in possession of 49.0 grams of an illegal intoxicating drug (marijuana) on company property on May 20, 1978. The Assistant Manager, Diesel Shop, had asked Claimant to open his locker and remove the contents.

After Claimant had removed most of the contents from his locker, he picked up a brown paper bag and tried to conceal it from the Carrier officers by placing it against his side. The brown paper bag contained two bags of a substance wrapped in plastic. It is clear from the above that the two bags of substance were in Claimant's locker and in his possession on May 20, 1978.

The Organization attempts to defend Claimant's actions by contending that he never acknowledged possession of the bag. Although at the time of his arrest Claimant denied that the substance belonged to him, he made no such allegation at the time the bag was found in his locker.

The "Findings" of Referee Roadley in Second Division Award No. 7234 are germane to this point and read, in pertinent part, as follows:

"Regarding the matter of being in possession of the subject drugs and pistol it is noted that Webster's Dictionary defines possession as:

'The act of having or taking into control; control or occupancy of property without regard to ownership.'

Referee Moore, in First Division Award 22 294, stated in this regard as follows:

'The Board notes that 'having possession' includes having under one's control. This means in one's home, in one's automobile or any other place where the claimant would have control over the articles in question.'

Based upon a thorough review of the record before us it is clear that claimant received a fair and impartial investigation, that the findings of the carrier were supported by substantial evidence and that under the circumstances in this case the discipline assessed was not too severe."

Finally, we find that the discipline imposed in this instance is commensurate with the severity of the offense. The investigation proved that Claimant had in his possession 49.0 grams of marijuana on Company property and was guilty of conduct unbecoming an employee. Possession of an illegal intoxicating drug on Company property is a serious offense and warrants dismissal. Therefore, the Carrier's action in dismissing Claimant was fully warranted and justifiable.

In a case involving a clerk on Company property who was dismissed for his involvement with drugs, the Third Division held:

"Given the Carrier's undisputed strong and unequivocal stand toward narcotics and any employee connection therewith, the Board cannot find that the Carrier acted in an arbitrary or improper manner. 3 NRAB, Awd. 21949, BRAC vs. SOU (Marx)."

In another case on point with the present one, the Board upheld the Carrier's dismissal of a trainman who was found in possession of marijuana on company property by holding:

"There can be no doubt of claimant's guilt. The only issue is whether permanent dismissal under these circumstances is justified. The claimant had been an employee of the Carrier for approximately one and one-half years. Under those circumstances, as previously stated by this Board, there is no justification to rule that permanent dismissal is harsh, severe or unjust. The employee simply has not built up enough credits or seniority to justify reinstatement. On the foregoing basis the Board finds no support for the claim."
PLB 912, Awd. 189, UTU(C&T), vs. N&W (Moore)

The Carrier has shown that Claimant was given a timely investigation and was afforded all the rights to which he was entitled under Rule 34. The evidence in this case conclusively proved that the claimant was in possession of an illegal intoxicating drug on Company property on May 20, 1978 and was guilty of conduct unbecoming an employee. Therefore, in view of the seriousness of this offense, we conclude that the Carrier did not act in an arbitrary or capricious manner in dismissing Claimant, and the claim must be denied.

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 27th day of January, 1982.