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Parties to Dispute: { Brotherhood of Railway Carmen of the United States
and Canada
{ Maine Central Railroad Company

Dispute: Claim of Employees:

1. That Carman B. A. Reid was improperly dismissed from the service of the Maine Central Railroad Company on November 19, 1979.
2. That accordingly, the Maine Central Railroad Company be ordered to reinstate Carman B. A. Reid to the service with all seniority rights and benefits unimpaired and compensation for all lost wages from November 19, 1979 until restored to the service of the Carrier.
3. That reimbursement be made to Carman B. A. Reid for all losses sustained on account of coverage being deprived under Health and Welfare and Life Insurance Agreements during time held out of service.

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 employees 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 B. A. Reid entered service with the Carrier on October 14, 1974. Claimant was discharged from the service of Carrier on November 19, 1979 after formal hearing concerning alleged violation of General Rule 703 of the Rules Governing Mechanical Department Employees.

General Rule 703 reads:

"Employees who are careless of the safety of themselves or others, disloyal, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who conduct themselves in such a manner that the Railroad will be subjected to criticism and loss of good will, will be subject to dismissal from the service."

Specifically, Claimant was cited for having been found guilty on two counts

of trafficking in scheduled drugs at Kennebec County Superior Court on October 23, 1979. Claimant had pleaded guilty to the criminal charges against him. The Carrier concluded that the Claimant's conduct was dishonest and would subject the Railroad to criticism and loss of good will.

The Central Maine Morning Sentinel Newspaper of October 27, 1979 carried the following news article headlined "Waterville Man Is Sentenced in Augusta":

"A 29-year-old Waterville man was found guilty of two counts of trafficking in scheduled drugs at Kennebec County Superior Court this week.

Bruce Reid was fined \$500 for trafficking in marijuana on May 10, and \$1,000 for trafficking in hashish on May 15, both in Waterville. He sold the drugs to an undercover agent who was involved in the State Division of Special Investigation (DSI) drug probe in the area.

Justice Louis Scholnik also gave Reid a 6-month suspended sentence to the county jail, and placed him on one-year probation. Reid had pleaded guilty to the charges.

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Editions of the Morning Sentinel in early August, 1979 has specifically named Claimant as an adult arrested as part of the crackdown on local drug dealing and, subsequently, as arraigned in a major drug bust for trafficking in marijuana and hashish.

Claimant's service record indicated that he had been assessed 75 demerit marks in October, 1979 on charges outlined in a letter of September 24, 1979 which included absenteeism without proper authorization and chronic absenteeism in violation of General Rule 707; and for conduct leading to a guilty plea to charges of unlawful possession of Schedule W and X drugs; illegal possession of marijuana; operating to endanger; and failing to stop for an officer on November 11, 1978; - all in violation of Rule 703.

The Morning Sentinel of August 21, 1979 contained a news article which read, in part:

"Bruce Reid, 29, of Thorndike, was fined \$1,000 after pleading guilty to charges of unlawfull possession of schedule "W" and "X" drugs, illegal possession of marijuana, operating to endanger and failing to stop for an officer. The offenses occurred Nov. 11, 1978, in Albion and Benton."

It is the position of the Employees that Claimant was dismissed without just cause, that General Rule 703 (a non-negotiated rule) is arbitrary and without application to the off-duty conduct of employees whose activities are unrelated to the business of the Carrier. It is emphasized that the Railroad was never

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mentioned in the news media or in the conduct of the trials of Claimant and, consequently, the Railroad has not established that it was or will be subjected to criticism or loss of good will. Further, it is contended that Rule 32 of the Controlling Agreement was violated by the Carrier in this case.

The Board finds nothing in the record evidence of this case to support any contention that Rule 32 of the Controlling Agreement was violated.

Claimant's admission at the formal hearing to the trafficking in scheduled drugs, to which he pleaded guilty on two counts in October, 1979, support the Carrier's conclusion of Claimant's guilt of criminal conduct of such a nature that it is reasonable to conclude, even in the absence of direct evidence to that effect, that the Railroad will be subjected to criticism and loss of good will, under the circumstances of this case.

Here, as in the case before the Board in Second Division Award 7678, the situation was not one involving mere possession or simple use of marijuana, but rather one of trafficking therein. In Award 7678, this Board held that a Carrier acted reasonably and properly in dismissing an employe from service as discipline for trafficking in marijuana where the matter had been reported in the local newspaper. In the instant case, Claimant pleaded guilty not only to trafficking in marijuana, but also in the "harder" drug of hashish.

Earlier, Claimant had elected to violate the law in possessing scheduled drugs and operating to endanger and failing to stop for an officer of the law. He had pleaded guilty to those charges, and that unlawful conduct had been given newspaper coverage. At no time did the Carrier condone such conduct.

It is the conclusion of this Board that the record evidence does not permit it to hold that a lesser penalty than dismissal from service was warranted. The Carrier has acted reasonably in the exercise of its judgment. Rule 703 is found applicable to the present circumstances and Claimant's Service Folder contains nothing sufficient to mitigate the discipline imposed on him. Therefore, the claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of January, 1983.

