

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(International Association of Machinists and
(Aerospace Workers
Parties to Dispute: (
(Metro-North Commuter Authority

Dispute: Claim of Employees:

1. That the Metro-North Commuter Authority be ordered to restore Machinists T. Clark to service and compensate him for all lost pay up to time of restoration to service at the prevailing machinist rate of pay.

2. That Machinist T. Clark be restored to service with seniority unimpaired and compensated for all insurance benefits, vacation benefits, holiday benefits, and any other benefits that may have accrued to him and were lost during this period, in accordance with Rule 7-A-1 (e) of the prevailing agreement effective May 1, 1979.

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 employes 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.

A trial was held on May 10, 1982 to consider the alleged violation of Rule G in the possession of marijuana by the Claimant. The alleged violation occurred on April 20th when the Carrier maintained the Claimant was found possessing the substance and was removed from duty. Following the trial, the Claimant was notified that he had been found guilty as charged and because of the seriousness of the offense was dismissed from service with the Carrier.

A complete review of the record of this case as it developed on property clearly substantiates Carrier's findings of guilt. Carrier Officials' Kirner and Larkin stated that they found the Claimant in possession of the package in question. Both further maintained that the Claimant indicated on the date of the event that the package had been removed from his car because he feared detection by police surveillance with dogs in the parking lot on that date. The Claimant later stated that the package he had in his possession had been found by him on the floor. With respect to the alleged violation, the record shows sufficient substantial evidence to warrant the conclusion that the Claimant was guilty as charged.

As such, the only issue left before this Board is whether the discipline imposed by the Carrier is excessive. This Board has emphasized in numerous past Awards that the discipline should be progressive, reasonable and nonarbitrary. It has held that a major purpose of discipline is to allow Employees to comprehend the seriousness of their actions with the goal of providing a corrective environment to reduce the incidence of future behaviors (Third Division Awards 5372; 19037; 25336).

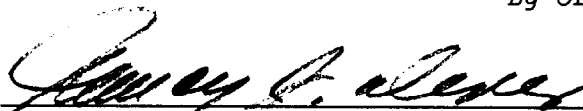
This Board finds that the Claimant was neither charged nor involved in the use of marijuana or its sale on Carrier property. While the Claimant was clearly guilty of possession and as such, warranted discipline, there is no evidence of record that the Claimant had any prior discipline in eight years of service to the Carrier. As such, this Board finds that the discipline imposed was severe and not progressive. Therefore, this Board rules that the Claimant be restored to service with seniority unimpaired, but without compensation for lost time and benefits. His time out of service is sufficient and serious penalty for his possession of marijuana.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of September 1985.