

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21827
Docket Number MW-22014

Don Hamilton, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Burlington Northern Inc.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Sectionman K. W. Kuska for alleged violation of 'Rules 700, 701 and 702B of the Maintenance of Way Department on October 23 and 24, 1975, and violation on your part of Rules 700, 701 and 705 and "G" of the Maintenance of Way Department on October 26, 1975' was capricious, arbitrary, without just and sufficient cause, on the basis of unproven charges end in violation of the Agreement (System File P-P-269C/MW-203/5/76B).

(2) Sectionman K. W. Kuska shall now be allowed the benefits prescribed in Agreement Rule 4.0 (G)."

OPINION OF BOARD: The Claimant, Kuska, occupied a bunk house with another employee, G. E. Greene. The bunk house was approximately 180 feet from a house occupied by the Section Foreman, his wife and three children. On October 23, 1975, the Claimant and Greene fired a shotgun several times. The Section Foreman notified his Supervisor and the State Patrol. The Supervisor of Roadway Maintenance authorized the Patrol to search the bunk house where marijuana was located.

The Claimant was charged with failure to protect his assignment on October 24, 1975. An investigation was conducted and the Claimant testified that he was unable to protect his assignment because, "I was being held in jail for citation, possession of marijuana, or frequenting a place where marijuana was being used."

On October 26, 1975, while the Claimant was being held out of service pending the results of the prior investigation, he went to the bunk house to remove his personal belongings. He attempted to enter the bunk house by kicking at the door, knocking out the lower portion thereof. He made threatening remarks concerning the Roadmaster and the Section Foreman. A second investigation was scheduled as a result of this incident. The Claimant did not attend the investigation, but was represented by his Vice General Chairman.

On November 25, 1975, the Claimant was notified that he was dismissed from the service of the Carrier as a result of the evidence presented at the investigations of October 30 and November 21, 1975.

In the appeal to this Board, the Claimant raises certain procedural questions which were not presented on the property. The record indicates that the Claimant did not question the propriety of the investigation or the manner in which the hearings were conducted until long after the hearings were concluded.

The record sustains the allegations made by the Carrier and the procedural defenses raised by the Claimant are both untimely and without merit.

There is sufficient evidence of record to sustain the Carrier's discipline of discharge.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 6th day of January 1978.