

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23410
Docket Number MW-23475

Paul. C. Carter, Referee

PARTIES TO DISPUTE: { *Brotherhood of Maintenance of Way Employees*
{ *St. Louis-San Francisco Railway company*

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

(1) The dismissal of Trackman Eddie Lee Walker for alleged violation of Rules G and 176 was without just and sufficient cause and on the basis of unproven charges (System File B-1542-1).

(2) Trackman Eddie Lee Walker shall be returned to service with seniority and all other rights unimpaired, compensated for all wage loss suffered and have the charges leveled against him removed from his personal record."

OPINION OF BOARD: Claimant had about five years of service as trackman. On May 6, 1979, claimant was arrested by civil authorities on three counts involving possession of marijuana. He appeared in the District court, Lamar county, state of Texas, on July 23, 1979, and pled guilty to a felony charge of delivery of marijuana in a uaeable amount of over one-fourth ounce on May 6, 1979. He was sentenced to confinement in the State Department of Corrections for a term of three years. The sentence was suspended and he was placed on probation for a period of three years. The other two counts were dropped by the civil authorities.

Claimant was removed from service July 31, 1979, for violation of Carrier's Rule "G", which reads:

"The use or possession of intoxicants or narcotics is prohibited."

Following claimant's dismissal, the Organization requested an investigation in accordance with the rules of the applicable Agreement. Formal investigation was conducted on August 14, 1979. A copy of the transcript of the investigation has been made a part of the record. In the investigation the claimant questioned the legality of his arrest. Any question in that respect should have been handled with the civil authorities. However, the fact remains that claimant did plead guilty.

The record shows that claimant was previously dismissed for cause and withheld from service from November 16, 1976, to April 18, 1977.

Considering the entire record, the Board finds no proper basis for interfering with the discipline imposed by the Carrier.

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. Paulson

Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November 1981.

