

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24356  
Docket Number MW-24470

Paul C. Carter, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees  
(The Baltimore and Ohio Railroad Company)

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

(1) The dismissal of Welder H. J. Layman for alleged 'possession of illegal drugs and/or drug related paraphernalia' on July 18, 1980 was without just and sufficient cause and on the basis of unproven charges (System File ERRG-1712/2-MG-2920).

(2) Welder H. J. Layman shall now be allowed the benefits prescribed in Agreement Rule 48(e)."

OPINION OF BOARD: Prior to his dismissal, Claimant was employed by the Carrier as a welder, and was assigned to the Eastern Region Rail Gang, headquartered in camp cars at Port Covington, Baltimore, Maryland.

In the summer of 1980 the Carrier, in conjunction with the Baltimore, Maryland, Police Department, arranged to conduct a search of the camp cars to determine the presence, if any, of illegal drugs.

The Organization contends that the search was conducted without the knowledge or permission of the Claimant or other employees assigned to the camp cars, and refers to it as an "illegal search." The question of whether the search was legal or illegal is left one for determination by this Board.

During the search alleged drugs and a wooden pipe were found in the room usually occupied by Claimant and another employee. On July 23, 1980, Claimant was notified to attend a hearing, scheduled for 9:00 A.M., July 30, 1980, on the charge:

"You are charged with responsibility in the possession of illegal drugs and drug related paraphernalia in Camp Cars belonging to the Chessie System and located on property of the Chessie System at Port Covington in Baltimore, Maryland. The alleged offense occurred on Friday, July 18, 1980 at approximately 8:35 A.M."

At the request of the Organization, the investigation was postponed and rescheduled for August 8, 1980. The investigation was held as rescheduled. Claimant was present and represented. A copy of the transcript has been made a part of the record. We have carefully reviewed the transcript and find that none of Claimant's substantive procedural rights was violated. The charge against Claimant was sufficiently precise to enable Claimant and his representative to prepare a defense. We find no proper basis for any contention of prejudgment by the Carrier.

It was developed in the investigation that the **wooden** pipe involved contained a residue of marijuana. In the investigation Carrier's Police Officer Steele testified:

- "Q. Mr. Steele, did you assist **in** an investigation on **Company** Camp Cars **at Port Covington in Baltimore, Maryland on** Friday, July **18, 1980**, at **approximately 8:35 A.M.**?
- A. Yes, I did.
- Q. Mr. Steele, **would** you state for the record the nature of your assistance?
- A. I was **informed** to assist Baltimore City **Police Canine** Division on the above date in an attempt to locate drug paraphernalia.
- Q. Mr. Steele, was Mr. **Layman's room** identified to you during this investigation?
- A. Yes, it was.
- Q. Mr. **Steele**, was **anything** found in Mr. Layman's r-relating to the charge?
- A. Yes. **A wooden pipe was found in Mr. Layman's locker.**

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- Q. Mr. **Steele**, **MS** the **pipe examined** to see **if** the **pipe** was used for narcotics?
- A. Yes, it had **\*\*\***.
- Q. Mr. Steele, do you know for sure that Mr. Layman was the sole user of that locker?
- A. **When talking to Mr. Layman, I was told that he was the sole user of this locker?**
- Q. Mr. Steele, then you are not sure that this **pipe belonged** to Mr. Layman or **Mr. Matthews** or Mr. **X**?
- A. **On 7/21/80, when confronting Mr. Layman with the pips in question, Mr. Layman informed me that this was his pips and it belonged to him."**

Carrier's **System Rail** Supervisor J. Van Kirk, **in** answers to questions by one of Claimant's representatives, testified:

- "Q. Mr. Van **Kirk**, were you present **when Mr. Steele** contacted **Mr. Layman on July 21, 1980**?
- A. Yes sir.
- Q. Would you please state for the record what Mr. Steele **said**?
- A. He asked him to identify a **pipe** he had found **in his room**.

Q. What was **Mr. Layman's** response?

A. He admitted the pipe was his and started talking about his civil rights."

The Claimant testified:

'9. **Mr. Layman**, is there any statement that you would like to **make** at this time that you feel would be pertinent to this hearing?

A. I don't recall saying **that** the pipe belonged to **me**."

Also, a Mr. Danny Collins, **who** had been in Carrier's **service** about one year, called as a witness in behalf of Claimant testified:

'Q. On July 21, in the presence of Mr. Steele and **Mr. Layman** did you hear Mr. Steele ask Mr. **Layman** if a certain pipe **belonged to Mr. Layman**?

A. Yes, I heard Mr. Steele ask Mr. **Layman** that.

Q. Did you hear Mr. **Layman** respond to **Mr. Steele**?

A. **Mr. Steele** asked Blocky if **that** pipe was his. and **Blacky said it was** not his."

**Thus, in the** investigation we have direct conflict in the **testimony** as to the **ownership** of the wooden pipe. **This** Board has held on **numerous** occasions that it will not attempt to weigh evidence, resolve conflicts, or pass **upon** the credibility of witnesses. Those functions are **reserved** to the hearing officer.

About nine **months** after the **investigation was** concluded, the General chairman of the Organization. **in** appeal to the Carrier's highest designated officer, enclosed **a** statement **from Claimant's** mother and other **material, which** the General Chairmen contended had **a** bearing on the ownership of the **wooden** pipe. **In** disputes involving discipline, this Board has consistently and repeatedly held that the parties to such disputes and the Board are each and all restricted to the evidence introduced at the hearing or investigation. The record may not properly be added to after the **investigation or hearing closes**. The **material** submitted by the **General Chairman in May, 1981, may not properly be considered**.

Based **upon** the record properly before the Board, there is **no** proper basis for the Board to interfere with the **disciplina imposed** by the Carrier. The use of or possession of drugs, especially on Carrier's property, is a serious offense, g-ally resulting **in** dismissal.

**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 **Employes involved** in this dispute are respectively Carrier and **Employes** within the meaning of **the Railway** Labor Act, as approwed 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: Acting Executive Secretary  
National Railroad Adjustment Board

By *Rosemarie Brasch*  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of May 1983.

