

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26185  
Docket Number MW-26424

Charlotte Gold, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(The Chesapeake and Ohio Railway Company  
(Southern Region)

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

(1) The dismissal of Trackman P. Rodriguez for 'possession of drug related equipment' was without just and sufficient cause and on the basis on unproven charges (System File C-D-2295/MG-4621).

(2) The claimant's record shall be cleared of the charge leveled against him, he shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant in this case, was issued a Notice of Investigation to appear for a Hearing on April 5, 1984, into the following charge:

"You are charged with the alleged possession of narcotics or dangerous drugs on Company property at approximately 8:30 p.m., on March 22, 1984, in the System Camp cars at Fulton in Richmond, Virginia."

An inspection conducted by Carrier's Police Department and the State Police on March 22, 1984, had resulted in the discovery of a clip and a pipe in Claimant's locker. When later analyzed, it was revealed that the pipe contained marijuana residue. As a consequence of the Hearing, Carrier's charge was sustained and Claimant was terminated on April 19, 1984.

Carrier argues that Claimant was afforded a full and impartial Hearing, that Claimant's guilt was proven by substantive evidence, and that the discipline assessed was appropriate. Carrier maintains that although a prior inspection had resulted in some employees receiving letters of warning, that is not relevant in this case. That incident should have placed members of the Rail Gang on notice that possession of alcohol or drugs would not be tolerated. Claimant acknowledged that the clip and pipe were his. Given his guilt in this instance and Carrier's responsibility to the public and its employees to maintain a safe work environment, discharge was warranted.

Since Claimant was discharged for possession of drug-related paraphernalia, the Organization maintains that the original charge was erroneous and consequently Carrier's decision should be overturned. Furthermore, Claimant merely found the pipe in question and never used it. There can be no doubt that the discipline imposed was harsh and unjust, given the fact that others were issued letters of warning in the past.

This Board agrees with Carrier that by March 22, 1984, Claimant should have been fully aware that Carrier looked with disfavor on the possession or use of drugs and alcohol on the job. The Hearing Officer did not place much credence on Claimant's testimony that he had merely found the pipe with the marijuana residue and we defer to him on this question of credibility.

In general, we do not find a major inconsistency in the original charge and the final letter of termination. Based on sufficient probative evidence brought forth at the Hearing, it is clear that the charge was sustained and that discipline was warranted.

As in Award No. 26184, involving the discharge of a Trackman following the same inspection as conducted in this case, we view with extreme gravity the possession and use of drugs and alcohol on the job in the rail industry. There is too great a potential threat to the welfare and safety of others as the consequence of the actions of someone who is operating in an impaired condition. As in that case, we note that Claimant has now been out of service for more than two and a half years. It is our hope that a decision in which Claimant is returned to work without backpay on a last chance basis will be sufficient to impress upon him the need to function as a fully responsible employee in the future. His failure to do so will inevitably result in dire consequences for him.

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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of November 1986.