

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26664
Docket Number MW-27062

Edwin H. Benn, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(The Chesapeake and Ohio Railway Company

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

1. The dismissal of Trackman R. M. Drewry for alleged conduct unbecoming an employee was without just and sufficient cause and on the basis of unproven charges (System File C-D-2627/MG-4925).

2. The claimant's record shall be cleared of the charges 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 is the same individual discussed in Third Division Award 26394. As we noted in that Award, the events leading up to the disciplinary action in this case stemmed from an incident wherein Claimant's vehicle was searched and Claimant was charged with misconduct including possession of narcotics while on the Carrier's property. The Carrier agreed to return Claimant to service when it was demonstrated that Claimant's vehicle was not on the Carrier's property. Thereafter, Claimant was charged and ultimately dismissed for conduct unbecoming an employee in that the Carrier contended that Claimant was convicted on October 1, 1984, in Newport News Circuit Court for the unlawful possession of marijuana.

We agree with the Carrier that Claimant's overall conduct constituted conduct unbecoming an employee. On October 1, 1984, Claimant entered into a plea agreement that provided, as charged by the Carrier, that "Defendant hereby agrees to enter a plea of Guilty to the following charges: Possession of Marijuana (A misdemeanor)." We note, however, that after all of the court proceedings were completed (a date after the disciplinary action was taken in this case), Claimant was no longer technically "convicted on October 1, 1984, in Newport News Circuit Court for the unlawful possession of marijuana" as charged by the Carrier. Rather, the plea agreement of October 1, 1984, provided that the court was to withhold findings of guilt or innocence and defer proceedings for a period of one year with Claimant being placed on probation. On November 12, 1985, the court further noted that Claimant did not violate his probation and had been on good behavior and therefore dismissed the criminal charge against Claimant in accord with the plea agreement entered in the proceedings before the court on October 1, 1984, and Virginia's statutory provisions for first offenders.

While we do not believe that the technicality of the procedural posture of the criminal proceedings detracts from the Carrier's substantial evidentiary showing that Claimant was guilty of conduct unbecoming an employee, and further noting that Claimant has entered and completed a substance abuse rehabilitation program, we do believe that dismissal was overly harsh and excessive under the circumstances. See Public Law Board No. 3443, Award 24. We shall therefore require that Claimant be returned to service with seniority unimpaired but without compensation for time lost. Return to service is conditioned upon Claimant's successful completion of a physical examination.

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

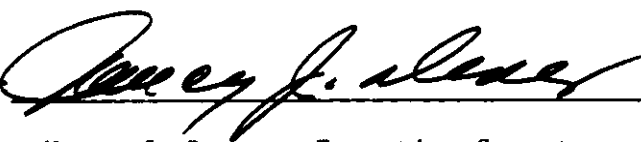
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1987.