

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Kansas City Terminal Railway Company

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

(1) The dismissal of Trackman-Machine Operator C. K. Fultz, Trackman R. L. Ludgate and Trackman V. R. Sendejas; and the fifteen (15) days' suspension of Trackman R. L. Cumbie for alleged violation of Rules 'E', 'G', 'H' and Safety Rule 141 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (Carrier's File MW-1.85.30).

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

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Following an investigation held on October 10, 1985, Claimants were dismissed from Carrier's service, while Claimant was issued a fifteen-day suspension. Claimants had been charged with violations of Rules E, G and H of the Carrier's Rules and Regulations, and Rule 141 of the Safety Rules, in that, on October 3, 1985, they were allegedly observed on duty, on Company property, smoking marijuana (or, in the case of Claimant Cumbie, watching the smoking of marijuana), not performing assigned duties for a prolonged period of time, and not wearing hard hats.

This Board has reviewed the entire record of this case, including the transcript of the investigation, and finds that, given the direct testimony of KCS General Superintendent John Kosman, who observed the incident, as well as the positive laboratory reports, it must be concluded that Carrier has sufficient basis on which to make a determination of guilt. In regard to Claimant Cumbie, we have noted in Third Division Award 25688 that discipline is appropriate where Claimants "acquiesced in the serious violation of the Carrier's Rules and failed to make an effort to protect the Carrier's operations as they are expected and required to do."

Rule G of the Carrier's Rules and Regulations states that the possession of alcoholic beverages, intoxicants or narcotics is sufficient cause for dismissal. In light of Claimants Fultz, Ludgate, and Sendejas' clear violation of this Rule, their discharges must be sustained. A fifteen-day suspension for Claimant Cumbie is neither arbitrary nor capricious.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1988.