

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Consolidated Rail Corporation

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

(1) The dismissal of Machine Operator S. L. Snow for possession of a controlled substance on Company property on August 9, 1989 was unjust and unreasonable (System Docket MW-910).

(2) The Claimant shall be reinstated in the Carrier's service with seniority and all other rights unimpaired, he shall have his record cleared of the charge 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 waived right of appearance at hearing thereon.

Claimant was employed as a Class 2 Operator on Track Gang #637, headquartered at Carrier's South Anderson Yard, Anderson, Indiana. On August 9, 1989, the Division Transportation Superintendent received an anonymous letter stating that drugs were being used by members of Track Gang #637. Conrail Police subsequently initiated an investigation at the South Anderson camp cars which housed members of the gang in question.

Using a qualified drug sniffer dog, the Police identified indications of drugs in two of the three bunk cars. After marking the areas indicated by the dog, the Chief Inspector assembled members of the track gang and asked them to identify their lockers and bunks. They were also asked for permission to inspect their lockers and bunks, which they granted. The Claimant identified two of the areas detected by the dog to be his, i.e., a duffel bag on

his bunk, and his locker. The Claimant voluntarily permitted the officers to search his belongings. Inside the duffel bag was a brown paper bag containing green plant material, and in his locker was an empty cigarette carton containing the same substance.

On-site testing by narcotics officers from the Anderson Police Department identified the substance as marijuana. Subsequent laboratory testing at the Anderson Police Department confirmed the identity of the substance. Total combined weight was 17 grams. The Claimant denied any knowledge of the items found during the search. When Carrier officials at that time offered him the chance to undergo a drug screen urinalysis to buttress his defense he refused to do so. At approximately 5:10 P.M. on August 9, 1989, the Production Supervisor removed the Claimant from service pending Investigation.

By Form G-250, dated August 11, 1989, Claimant was directed to report for a Hearing in connection with the following charge:

"Your possession of a controlled substance on
Company property at approximately 4:30 p.m. August
9, 1989 in camp cars at Anderson, Indiana."

The Hearing was held on August 23, 1989. At the Hearing, Claimant admitted to possession of the marijuana, that he knew the substance was marijuana, and that he smoked marijuana on occasion. Following the Hearing, the Claimant was found guilty as charged and dismissed from service as of August 31, 1989. The discipline was appealed by the Organization on behalf of Claimant and processed up to the highest Carrier Officer authorized to handle such matters, at which level it remained unresolved. Accordingly, it is properly before this Board for adjudication.

In light of Claimant's admission that he knew he was in possession of the marijuana found in his belongings, the Organization relies primarily upon the Claimant's long and essentially unblemished record in Carrier's employ prior to the incident in question for support of its Claim. Thus, the Organization maintains that the assessment of the ultimate penalty of dismissal from service is excessive and inappropriate under the circumstances. Moreover, the Organization maintains that Carrier did not prove that Claimant was impaired on the job, because it did not obtain a urinalysis at the time of the Investigation.

Carrier points out that Claimant refused the opportunity to ameliorate his culpability by declining Carrier's offer of a urinalysis test on the afternoon of the Investigation. Thus, it was within its rights to make a negative inference (to Claimant's detriment) from such a declination. Moreover, it notes that Claimant's initial reaction to the discovery of marijuana in his possession was denial, not acknowledgment. Finally, Carrier notes that it is a well-established practice that when an employee is found to be guilty of possession of controlled substance, dismissal is justified.

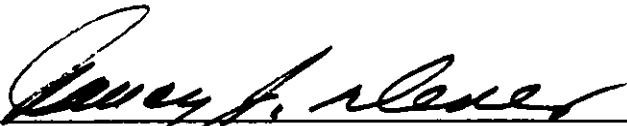
Based upon the compelling evidence before us, this Board has no question concerning Claimant's culpability in this case. The only arguable mitigating factor, Claimant's prior 15-year good employment record, appears relevant only if Carrier elected to return Claimant to service on a leniency basis. Such a decision, however, has long been held to be a determination for Carrier alone to make, and no evidence on the record before us persuades this Board to disturb that well-established tradition in this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1992.