

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20637
Docket Number CL-20736

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station Employees
PARTIES TO DISPUTE: (
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7630) that:

1. Carrier violated the provisions of Rule 21 when it acted harshly and unjustly in the case of Mr. M. J. Gannon, Telegrapher-Clerk, Green Bay, Wisconsin, when it dismissed him from the service on April 22, 1973, and;

2. Carrier shall be required to reinstate Mr. M. J. Gannon to the position he formerly held (Relief 4), and compensate him for all time lost, as well as Travelers Insurance premiums and any additional expenses incurred until he is returned to service.

OPINION OF BOARD: Claimant entered Carrier's service on September 24, 1969 and on the date in question was working as a Telegrapher Clerk at Marinette, Wisconsin, with hours of 2:00 P.M. to 10:00 P.M.

On April 5, 1973 Claimant received a letter charging him as follows:

"Your responsibility for having been arrested at approximately 9:05 P.M. on April 2, 1973, in or about the vicinity of Cedar River, Michigan, at which time Marijuana was found in your automobile. The time of 9:05 P.M. was also the time you were supposed to have been on duty on your assignment of telegrapher-clerk relief job No. 4 at Marinette, Wisconsin, hours 2:00 P.M. to 10:00 P.M."

Following an investigation held on April 17, 1973, Claimant was found guilty as charged and dismissed from service.

The Organization first raises the question of the conduct of the hearing and alleges that Claimant was denied due process in that the Division Manager preferred the charges, made the decision of dismissal based on the record of the investigation and also was the designated officer for the Carrier at the first appellate level. The authorities cited by Petitioner in support of this argument are distinguishable since they

deal with hearing officers acting as witnesses as well as "prosecutors and judges". We do not look with favor on the practice of multiple roles, as in this case, with an apparent diminution of objectivity in the investigation. However, on its face, Carrier's actions in processing this case did not violate the agreement or deprive Claimant of due process.

Petitioner argues further that the Rules do not provide Carrier with the right to prefer charges against an employee relating to an incident which occurred after he had left his assignment and had left Carrier's property. The facts in this dispute are that Claimant was arrested for speeding some 15 to 20 miles from his work assignment at the time indicated and marijuana was found in his automobile. He was fined for the traffic violation and the drug charge was later dropped. The Carrier found out about the incident via an anonymous mailing of a newspaper clipping recounting the arrest; the story was later verified by Carrier's security force.

Claimant further avers that the incident of the arrest, particularly since the drug charge was dropped, did not discredit the Carrier. It is concluded, therefore, that the sole issue remaining is the penalty assessed for Claimant's early quit without permission and his claiming compensation when absent. The Organization states that Claimant left early since his work was completed and he had some personal business to attend in a nearby community. It is further argued that the practice of leaving early when work is completed is common in the industry and frequently condoned by Carriers, within limits. We note that there is absolutely no evidence in support of this contention. Finally, it is urged that dismissal is a harsh and inappropriate penalty for the admitted infraction of leaving early.

Carrier in arguing the appropriateness of the action taken, states that this case involves an obvious violation of Rule G, and that this was raised at the investigation. That Rule provides:

"G. The use of alcoholic beverages or narcotics by employees subject to duty is prohibited. Being under the influence of alcoholic beverages or narcotics while on duty or on company property is prohibited."

Carrier concludes from the investigation that: "The facts indicate the probability that he in fact had the marijuana in his possession while at Marinette. Even if this is only assumed, however, it is factual that when arrested with marijuana in his possession, he was being paid and was still on duty. Rule G was therefore clearly violated."

We do not agree with Carrier's conclusions with respect to the alleged Rule G violation. First, Claimant had left the property and was clearly not on duty, but engaged in personal business when he was arrested; at that time he was not subject to the provisions of Rule G. Furthermore we do not find that the mere possession of marijuana in an employe's automobile, even if the car were on the Carrier's property, is violative of the Rule above, any more than the possession of a bottle, or indeed a case of liquor, in the trunk of a car on the parking lot would constitute a violation of the Rule. The Rule in question covers only using or being under the influence of the offending drug or alcohol.

Although Claimant was not charged with falsifying a time claim for the date in question, Carrier was properly exercised by the dereliction of duty in his leaving early without permission. We note that this infraction has been treated severely in some prior cases and awards have supported Carrier action of dismissal; some cases have not encompassed such severe penalty. In this dispute, it is apparent that the discipline was imposed primarily in the light of a charge which was directed with most emphasis to the alleged drug possession and arrest. We do not find that the Carrier has established substantial grounds for the conclusion of guilt on that score. For this reason we think that the penalty of dismissal in this case was excessive and unwarranted, in short an abuse of discretion. It is our conclusion, even though we do not lightly disturb penalties imposed when an infraction has been established, that dismissal was a harsh and excessive penalty for the early quit.

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 approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the penalty imposed was excessive.

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Claimant will be reinstated to the position he formerly held, with seniority rights unimpaired, but will not be compensated for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paulsen*
Executive Secretary

Dated at Chicago, Illinois, this 7th day of March 1975.