

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21825  
Docket Number SG-21925

Don Hamilton, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former New York, Chicago and St. Louis Railroad Company:

(A) The Carrier violated and continues to violate the rules of the Current Signalmen's Agreement, particularly Rule 58 (e), when after a formal investigation on March 12, 1975, in which investigation the Carrier did not sustain the charges, it dismissed Signal Maintainer N. F. McCormack from service on March 25, 1975.

(B) The Carrier now clear Mr. McCormack's personal record of charges brought against him by Regional Engineer J. A. Sattler's letter of March 5, 1975, and reinstate him to his former position (or any position his seniority entitles him to) with full pay for all time lost on such positions and all other rights and benefits provided for in Agreements between the parties and continuing until these requests are granted.

(C) Should this violation persist, continue, or prevail, this will be considered as a continuing claim as provided in Article V of the August 21, 1954 Agreement.

OPINION OF BOARD: It is agreed that the Claimant was on his regularly assigned days off when he was arrested and subsequently pled guilty to a charge of possession of marijuana.

The Company argues that this conviction is a violation of the Operations Bulletin which states in part:

"The conduct of any employee leading to conviction of any misdemeanor involving moral turpitude (including without limitation, the unlawful use, possession, transportation or distribution of narcotics or dangerous drugs) or of any felony is prohibited."

The Claimant argues that his conviction of a misdemeanor does not involve moral turpitude and that marijuana is neither a narcotic or dangerous drug.

The Claimant further argues that this incident occurred off duty and, therefore, should not subject him to discipline.

Many awards of this Board have held that a Claimant may be disciplined for conduct occurring while he is, in fact, off duty. See Third Division Awards No. 19263, 21228, and 21334 as examples.

Society is still debating the exact classification and relative harm of marijuana. Whether it is a narcotic or dangerous drug as contemplated by the Operations Bulletin is not decisive in this case. For criminal prosecution, State and Federal statutes differentiate between kinds and classes of drugs and narcotics for the specific purpose of assessing varying degrees of punishment in accordance with the type of drug or narcotic involved. It was intended that the Operations Bulletin cover all categories and classes of narcotics and dangerous drugs, and this would include marijuana as the average person views that substance. In other words, the Railroad and the employees understand marijuana to be one of those items prohibited, and it is not necessary that the different classes, categories and specific scientific names of each item be spelled out in the Bulletin.

The Operations Bulletin refers to the conduct of an employee leading to conviction of any misdemeanor involving moral turpitude. Blacks's Law Dictionary, Fourth Edition, defines "moral turpitude" as, "An act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. Traders & General Insurance Co. v. Russell, 99 S.W.2d 1079, 1087.", and "Conduct contrary to justice, honesty, modesty, or good morals. Marsh v. State Bar of California, 291 P. 583, 584."

The possession of marijuana has been determined by the State Legislature to be a violation of law. In this case, the possession was classified by the Legislature as a misdemeanor. The Claimant elected to violate the law, which a majority of those elected to the Legislature had passed. Therefore, he chose to commit an act contrary to society in general. It is quite likely that the Claimant does not agree with the statutory prohibition against the possession of marijuana. However, that is the law, and when he chose to violate the same, he elected to act contrary to the established rules of society.

One of the penalties for acting in such a manner is the forfeiture of his right to work for a railroad that seeks to project a good public image.

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 Agreement was not violatd.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A.W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 6th day of January 1978.