

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22434  
Docket Number MW-22329

Abraham Weiss, Referee

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employes  
(  
(Illinois Central Gulf Railroad

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

(1) The suspension of Machine Operator L. W. Jones for a period of six months was without just and sufficient cause and wholly disproportionate to the offense with which he was charged (System File La-149-T-76/134-296-233 Spl. Case No. 1064 MofW).

(2) The claimant's record be cleared of the charge and he shall be paid for all time lost since October 1, 1976 (including overtime).

OPINION OF BOARD: The claimant, while on his way to work on the morning of July 2, 1976, was arrested for possession of marijuana. The claimant pleaded guilty in criminal court and received a fine. The Carrier scheduled an investigation and the letter of charge reads:

"Please be present in my office at 10:00 A.M., Thursday, September 23, 1976, in order to continue investigation of July 16, 1976, to determine the facts and your responsibility, if any, in connection with your allegedly having been arrested on the early morning of July 2, 1976, in the vicinity of Gonzales, La., and charged with possession of marijuana.

"Your personal record will be reviewed at this investigation.

"You may bring representative and witnesses in your behalf if you so desire."

"Yours truly,

"R. H. Peak  
/s/ "Division Engineer"

The facts as brought out at the investigation showed that the claimant while on the way to work stopped to nap a short time at an unattended service station as he was early for work. The claimant was approached by law officers who requested to see his driver's license. While claimant was looking for his license, the officers discovered a small quantity of marijuana.

Subsequent to the investigation the Carrier sent the claimant the following letter:

"Investigation originally started July 16, 1976, suspended at your request, and resumed September 23, 1976, revealed that you had been guilty of violation of Rule G of the Rules for the Maintenance of Way and Structures in that you had marijuana in your possession while on your way to work on the morning of July 2, 1976.

"For this violation, you are suspended from the service of the company for six months starting October 1, 1976.

"Copy of investigation is attached for your information." (Emphasis added)

Rule G reads:

"Intoxicants, Narcotics and Drugs

"The use of intoxicants or narcotics by employees subject to duty, or their possession or use while on duty, is prohibited and will be considered an extremely serious offense which will normally subject the offender to dismissal."

Rule G is clear and unambiguous and the evidence does not show in any degree that the claimant was using marijuana while subject to duty or that he was in possession of marijuana while on duty. The claimant was not on duty as the letter of discipline recognized, but on his way to work. For this reason the claim must be sustained.

In making this decision, we do not intend to overturn or diminish the precedential effect of other Awards upholding Carrier's right to discipline employees for off-duty rule violations, particularly arrest for marijuana. Recent Third Division Award 21825 is one example. That case also involved discipline administered to an employee arrested while off duty for possession of marijuana. However, the instant case is distinguishable from Award 21825 and other cases involving off duty violations such as marijuana possession. The charge in Award 21825 was not Rule G, but a prohibition against misconduct, including arrest. In Award 21825 the Board upheld dismissal for an employee who violated the following Rule:

"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."

Also see Award 21228 to the same effect.

Carriers certainly have the right to promulgate such rules for discipline. Misconduct rules of this kind are common in the industry. This Carrier may even have such a rule promulgated, and had this Carrier invoked it, the Board could well have come to a different conclusion than the one expressed supra.

But in the instant situation, the Carrier chose to discipline the claimant for violating a very specific rule - Rule G - which had no relevance or application to the factual circumstances of the situation involving this claimant. Nor did Carrier argue that the actions of the claimant destroyed confidence in his basic integrity, self-control, or judgment.

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;

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

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A.W. Pauls*

Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1979.