

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23371
Docket Number MW-23408

Carlton R. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(St. Louis-San Francisco Railway Company

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

(1) The discipline of Trackman C. D. Cheek for alleged violation of 'Rule G' was arbitrary, unwarranted and on the basis of unproven charges (System File B-1764).

(2) The claimant's personal record be cleared of the charge leveled against him and reimbursement be made for all wage loss suffered, all in accordance with Rule 91(b)(6) of Article 11."

OPINION OF BOARD: The claimant was dismissed from service for smoking marijuana (a violation of Rule G) while riding as a passenger on one of the Carrier's trains.

Claimant avers the charges were not proven at the investigation. Two witnesses were heard at the hearing, the claimant and the Carrier employee (the conductor) who witnessed the alleged use of marijuana. The claimant denied the allegations of the Carrier witness.

The conductor provided testimony which, if believed, would establish that the claimant was smoking marijuana and admitted it to the Carrier's witness. The claimant objects to this testimony as being uncorroborated.

The claimant has cited Awards that were decided on the basis that the uncorroborated testimony of one witness is not sufficient to support a guilty verdict (Awards 6395, 7668, 14333, 18551 and 20706).

While the issue of uncorroborated testimony may have been material in the Awards cited, we have concluded that this is not a hard and fast rule which applies in all instances.

For instance, in Award 2-8280 where there were only two witnesses, the Award stated:

"The descriptions of the event are so dramatically opposed that it must be concluded that one or the other of these two sole witnesses is not telling the truth. Carrier's hearing officer, who assessed the discipline,

"obviously chose to believe the foreman's version. From the transcript of the investigation we cannot say that this conclusion was unsupported by the evidence or patently unreasonable. While we may have resolved the credibility conflict differently if we had the opportunity to observe demeanor and other factors relating to testimonial capacity, we do not have that opportunity under existing appellate procedures in this industry. Rather a long tradition of arbitral restraint in such cases has been firmly established by hundreds of awards by this and other grievance arbitration Boards operating under the Railway Labor Act. This approach is not of our making but it is so universally accepted and utilized by both parties that we cannot lightly cast it aside; notwithstanding its obvious limitations upon the pursuit of facts in a particular case."

In the instant case, there is no reason to suggest that the conductor, who has a responsible position with the Carrier, was motivated by any cause except to do his job. There is no evidence of any bad feeling or personal bias on the part of the conductor toward the claimant.

There is conflicting testimony, but without the opportunity to observe the witnesses while testifying, this Board cannot resolve such differences and overturn the decision of the Carrier. There is substantive evidence which supports the decision of the Carrier.

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 Employee involved in this dispute are respectively Carrier and Employee 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 violated.

Award Number 23371
Docket Number MW-23408

Page 3

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson

Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1981.