

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23411
Docket Number MW-23483

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(National Railroad Passenger Corporation

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

(1) The dismissal of Trackman Walter M. Wadsworth was without just and sufficient cause and wholly disproportionate to the charge leveled against him (Carrier's File NEC-MW-SD-7LD).

(2) Trackman Walter M. Wadsworth shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered."

OPINION OF BOARD: The record shows that claimant entered Carrier's service on August 15, 1977, as a trackman.

The Carrier states that, acting on an anonymous tip, Amtrak Police began investigation into the possible possession, use and dealing of controlled drugs at the Attleboro Camp Car Facility, Attleboro, Massachusetts. It contends that on May 15 and 16, 1979, Amtrak Police observed the claimant selling drugs to employes at the camp car facility from the trunk of his car. About 3:30 P.M., May 23, 1979, claimant was observed leaving the camp cars and going to the trunk of his car. Claimant removed a plastic bag, placed it in his left front pocket, and attempted to drive his automobile from Carrier's property. He was at that time arrested by the Amtrak Police. At the time of his arrest, claimant was searched and found to have in his possession one ounce of marijuana, and a search of his car revealed three more one-ounce bags of marijuana. The four ounces were sent to the Massachusetts Department of Public Health, Food and Drug Division, for analysis. On June 13, 1978, that agency reported that the substance had been analyzed and identified as marijuana.

On June 8, 1979, claimant was notified to appear for a formal trial at 11:00 A.M., June 14, 1979, on the charge:

"Violation of Safety Rule No. 4002 which states: 'Narcotic medication, controlled drugs and/or alcoholic beverages must not be used by or be in the possession of any employe while on duty or within eight hours before reporting for duty' and violation of Rule I which states: 'Employees will not be retained in the service who are insubordinate, dishonest, immoral, quarrelsome or otherwise vicious or who do not conduct themselves in such a manner that the Company will not be subjected to criticism and loss of good will...' in that you were placed under arrest for possession of drugs or narcotics on May 23, 1979 at Attleboro Yards, Attleboro, Mass."

Claimant and his representative appeared at the time stated and claimant signed a waiver to any right "I may have to a trial by the National Railroad Passenger Corporation for the following:

(Charge shown as quoted above)

and concluded his statement: "I am guilty as stated."

The claimant's representative signed the waiver of trials as a witness thereto.

On June 21, 1979, claimant was dismissed from service.

In view of claimant's admitted guilt, which was at his peril, there is no proper basis for disturbing the action 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 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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Poulos

Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November 1981.

