

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23451
Docket Number MW-23399

A. Robert Lowry, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Maintenance of Way Employees
{ Missouri Pacific Railroad Company
((Former Chicago and Eastern Illinois Railroad Co.)

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

(1) The dismissal of Trackmen R. Stevens, J. K. Smith and B. K. Lenich was without just and sufficient cause and on the basis of unproven charges (Carrier's File S 247-5745).

(2) The claimants shall be reinstated with seniority and all other rights unimpaired and they shall be compensated for wage loss suffered."

OPINION OF BOARD: Claimants J. K. Smith, B. K. Lenich and R. Stevens, with about three months of service with the Carrier, were employed as Trackmen on Carrier's Tie Gang 5273, a bunk car gang, stationed at Corning, Ark. On the evening of December 12, 1978, they were observed by Carrier's Special Agent smoking a "bong", a device used in smoking marijuana, in their automobile located on Company property. The local police were notified who apprehended the Claimants along with a package of marijuana found under the front seat of the automobile. The Claimants were arrested and placed in jail on the charge of possession of a controlled substance, marijuana.

Claimants were removed from service pending formal investigation, which was held on December 22, 1978. Copy of the transcript of the investigation was made part of the record. A careful reading of the transcript reveals Claimants were given a fair and impartial hearing. They were represented by the General Chairman of their choice, given the right to present witnesses, which they chose not to, and were permitted the right to cross examine the Carrier witnesses.

The three Claimants in the investigation admitted having in their possession marijuana as well as admitting smoking it as charged. In their defense they contended they were not on Company property when the offense took place, however, this was refuted by testimony of Carrier's witness, the Special Agent.

Rule G of Carrier's Uniform Code of Safety Rules reads:

"The use of intoxicants or narcotics is prohibited.
Possession of intoxicants and narcotics while on duty
is prohibited."

Item 5 of the Conditions of Employment reads as follows:

"Conditions of Employment - In consideration of my employment, I hereby agree:

"(5) to familiarize myself with and to observe all rules and regulations governing services to which I shall at any time be assigned; to maintain strict integrity of character; to faithfully observe the rules and/or policy governing the use or possession of intoxicating liquors or narcotics; and to perform my duties to the best of my ability."

Based on the entire record, including Claimants' statements in the investigation on December 22, 1978, the Board finds no proper basis for interfering with the discipline imposed.

The claim will be denied.

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 violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1981.

