

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24356  
Docket Number MW-24470

Paul C. Carter, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees  
{ The Baltimore and Ohio Railroad Company

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

(1) The dismissal of Welder H. J. Layman for alleged 'possession of illegal drugs and/or drug related paraphernalia' on July 18, 1980 was without just and sufficient cause and on the basis of unproven charges (System File ERRG-1712/2-MG-2920).

(2) Welder H. J. Layman shall now be allowed the benefits prescribed in Agreement Rule 48(e)."

OPINION OF BOARD: Prior to his dismissal, Claimant was employed by the Carrier as a welder, and was assigned to the Eastern Region Rail Gang, headquartered in camp cars at Port Covington, Baltimore, Maryland.

In the summer of 1980 the Carrier, in conjunction with the Baltimore, Maryland, Police Department, arranged to conduct a search of the camp cars to determine the presence, if any, of illegal drugs.

The Organization contends that the search was conducted without the knowledge or permission of the Claimant or other employees assigned to the camp cars, and refers to it as an "illegal search." The question of whether the search was legal or illegal is not one for determination by this Board.

During the search alleged drugs and a wooden pipe were found in the room usually occupied by Claimant and another employee. On July 23, 1980, Claimant was notified to attend a hearing, scheduled for 9:00 A.M., July 30, 1980, on the charge:

"You are charged with responsibility in the possession of illegal drugs and drug related paraphernalia in Camp Cars belonging to the Chessie System and located on property of the Chessie System at Port Covington in Baltimore, Maryland. The alleged offense occurred on Friday, July 18, 1980 at approximately 8:35 A.M."

At the request of the Organization, the investigation was postponed and rescheduled for August 8, 1970. The investigation was held as rescheduled. Claimant was present and represented. A copy of the transcript has been made a part of the record. We have carefully reviewed the transcript and find that none of Claimant's substantive procedural rights was violated. The charge against Claimant was sufficiently precise to enable Claimant and his representative to prepare a defense. We find no proper basis for any contention of prejudgment by the Carrier.

It was developed in the investigation that the wooden pipe involved contained a residue of marijuana. In the investigation Carrier's Police Officer Steele testified:

- "Q. Mr. Steele, did you assist in an investigation on Company Camp Cars at Port Covington in Baltimore, Maryland on Friday, July 18, 1980, at approximately 8:35 A.M.?
- A. Yes, I did.
- Q. Mr. Steele, would you state for the record the nature of your assistance?
- A. I was informed to assist Baltimore City Police Canine Division on the above date in an attempt to locate drug paraphernalia.
- Q. Mr. Steele, was Mr. Layman's room identified to you during this investigation?
- A. Yes, it was.
- Q. Mr. Steele, was anything found in Mr. Layman's room relating to the charge?
- A. Yes, A wooden pipe was found in Mr. Layman's locker.

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- Q. Mr. Steele, was the pipe examined to see if the pipe was used for narcotics?
- A. Yes, it had \*\*\*.
- Q. Mr. Steele, do you know for sure that Mr. Layman was the sole user of that locker?
- A. When talking to Mr. Layman, I was told that he was the sole user of this locker?
- Q. Mr. Steele, then you are not sure that this pipe belonged to Mr. Layman or Mr. Matthews or Mr. X?
- A. On 7/21/80, when confronting Mr. Layman with the pipe in question, Mr. Layman informed me that this was his pipe and it belonged to him."

Carrier's System Rail Supervisor J. Van Kirk, in answers to questions by one of Claimant's representatives, testified:

- "Q. Mr. Van Kirk, were you present when Mr. Steele contacted Mr. Layman on July 21, 1980?
- A. Yes sir.
- Q. Would you please state for the record what Mr. Steele said?
- A. He asked him to identify a pipe he had found in his room.

Q. What was Mr. Layman's response?

A. He admitted the pipe was his and started talking about his civil rights."

The Claimant testified:

"Q. Mr. Layman, is there any statement that you would like to make at this time that you feel would be pertinent to this hearing?

A. I don't recall saying that the pipe belonged to me."

Also, a Mr. Danny Collins, who had been in Carrier's service about one year, called as a witness in behalf of Claimant testified:

"Q. On July 21, in the presence of Mr. Steele and Mr. Layman did you hear Mr. Steele ask Mr. Layman if a certain pipe belonged to Mr. Layman?

A. Yes, I heard Mr. Steele ask Mr. Layman that.

Q. Did you hear Mr. Layman respond to Mr. Steele?

A. Mr. Steele asked Blacky if that pipe was his, and Blacky said it was not his."

Thus, in the investigation we have direct conflict in the testimony as to the ownership of the wooden pipe. This Board has held on numerous occasions that it will not attempt to weigh evidence, resolve conflicts, or pass upon the credibility of witnesses. Those functions are reserved to the hearing officer.

About nine months after the investigation was concluded, the General Chairman of the Organization, in appeal to the Carrier's highest designated officer, enclosed a statement from Claimant's mother and other material, which the General Chairman contended had a bearing on the ownership of the wooden pipe. In disputes involving discipline, this Board has consistently and repeatedly held that the parties to such disputes and the Board are each and all restricted to the evidence introduced at the hearing or investigation. The record may not properly be added to after the investigation or hearing closes. The material submitted by the General Chairman in May, 1981, may not properly be considered.

Based upon the record properly before the Board, there is no proper basis for the Board to interfere with the discipline imposed by the Carrier. The use of or possession of drugs, especially on Carrier's property, is a serious offense, generally resulting in dismissal.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of May 1983.

