

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26184
Docket Number MW-26423

Charlotte Gold, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Chesapeake and Ohio Railway Company
(Southern Region)

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

(1) The dismissal of Trackman C. L. Baisden for alleged possession of 'narcotics on Company property, at about 8:15 P.M., on March 22, 1984, at Fulton, Richmond, Virginia, in the vicinity of the Rail Force Camp Cars' was without just and sufficient cause (System File C-D-2294/MG-4622).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, the charge leveled against him shall be removed from his record and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant, a Trackman in Richmond, Virginia, was issued a Notice of Investigation into the following charge:

"You are charged with the alleged possession of intoxicants, narcotics or dangerous drugs on Company property at approximately 8:15 p.m., on March 22, 1984, in the System Camp Cars at Fulton in Richmond, Virginia."

Following a Hearing on April 5, 1984, Claimant was discharged effective April 19, 1984. This decision was appealed on the property and ultimately advanced to this Board for a final determination.

Carrier maintains that Claimant was properly notified of the charge and was given a fair Hearing, at which his guilt was clearly established. Railroad Police and State Police conducted a search of camp cars and the parking lot at Fulton, Richmond, Virginia on March 22, 1984. Claimant gave permission to have his car searched. Two marijuana cigarette butts were found in the ash tray and a plastic bag of marijuana was found under the driver's seat. Given Claimant's guilt, the discipline assessed was warranted.

The Organization maintains that the discharge should be overturned because the charge stated that the marijuana was found in camp cars rather than in Claimant's automobile. At the same time, the Hearing Officer failed to provide a witness requested by the Organization. The Organization believes that Carrier conducted a highly improper, if not illegal, search of the system camp cars and maintains that Carrier has no control over an employee's private vehicle. In any event, the discipline imposed was far too severe for the alleged infraction.

From a review of the record, it is evident that there were numerous facts adduced at the Hearing that support Carrier's initial charge and the Hearing Officer's ultimate determination of Claimant's guilt. By far the most important was both Claimant's and the Organization's admission that the marijuana found in Claimant's car belonged to him. In raising technical objections to Carrier's handling of the case on the property, the Organization seeks to overturn Carrier's decision. This Board, however, does not find that any alleged procedural error raised by the Organization rises to such a level as to warrant overturning a determination that was based on Claimant's clear admission of guilt.

Claimant was apprised of the fact that he was charged with the alleged possession of intoxicants or dangerous drugs on Company property. Despite the fact that the marijuana was in his private vehicle, that vehicle was located on Company property and Claimant gave the Police permission to inspect it.

The Organization also objected to the fact that a coworker of Claimant whom it wished to have at the Investigation was not called as a witness. While we adhere to the principle that it is essential for Hearing Officers to call as witness all those who can provide relevant information as to a Claimant's guilt or innocence, the Organization did not elaborate on why this testimony was needed nor did it speak of any effort it had made to have the witness appear. It is always necessary to balance practical limitations on calling numerous witnesses who have nothing germane to add with the need to provide a full and fair hearing. Given the Organization's silence on this issue, we cannot determine if the Hearing Officer erred in this instance.

In the final analysis, Claimant's guilt was clear. The question that remains is whether the discipline imposed was appropriate. This Board agrees with Carrier that the possession of drugs on Company property is an exceedingly serious offense and that the Company cannot condone such behavior. While fully recognizing this fact, we also note that as of this date, Claimant has been held out of service for over two and a half years. We believe that a decision in which Claimant is returned to work with no payment for this time held out of service should serve to impress upon him the gravity of his offense and the need to improve his performance in the future. Because of the real threat that drugs pose to Carrier, Carrier's clients, and to employees, this Board is returning Claimant to work on a last-chance basis. Claimant should be forewarned that any activity of a similar nature in the future will most assuredly result in his immediate discharge.

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

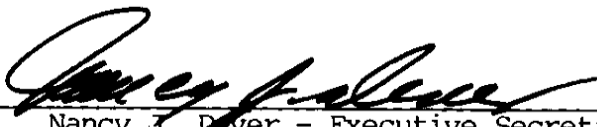
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of November 1986.