

PUBLIC LAW BOARD NO. 1760

Award No. 88

Case No. 88

File MW-DEC-83-33

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company

Statement

of Claim: Claim on behalf of D. M. Salmons requesting reinstatement and pay for time lost as a result of his dismissal following a September 15, 1988 investigation in which he was charged with conduct unbecoming an employee in connection with his guilty plea to a Class IV felony for possession of and with intent to deliver cannabis (marijuana).

Findings: The Board has jurisdiction of this case by reason of the parties Agreement establishing this Board.

Claimant Machine Operator, on May 24, 1988, after being stopped for speeding, was arrested on two charges, unlawful possession of cannabis with intent to deliver and unlawful possession of cannabis, both felonies. A newspaper article appeared in connection therewith in the Decatur Herald and Review. Claimant's supervisor on June 8, 1985 became aware of the article and Claimant's arrest on May 24, 1988.

The Claimant was withheld from service pending an investigation for charges of conduct unbecoming an employee concerning his arrest and the charge of possession of 193 grams (almost a 1/2 pound) of marijuana and intent to distribute.

The investigation was postponed several times and finally held on September 15, 1988.

In the interim Claimant had entered into a plea bargaining arrangement on August 30, 1988, therein pleading guilty on count 2- unlawful possession of cannabis, a class 4 felony, while count 1-intent to deliver-was dismissed.

As a result of the formal investigation, Carrier concluded therefrom that Claimant had pled guilty to his possession of the 193 grams and that constituted a felony conviction. He was dismissed from service as discipline for conduct unbecoming an employee.

Claimant was accorded the due process to which entitled under his discipline rule. There was no violation of Rule 30 because of having been held out of service. Said rule so permits because this concerned a major offense.

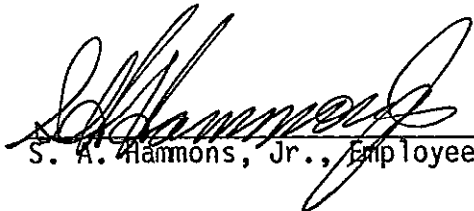
There was sufficient evidence adduced, including the admissions of Claimant, to support Carrier's conclusion as to his culpability. Q&A 48 reflected that he pled guilty to commission of a felony for possession of 193 grams of marijuana. Also the Claimant admitted to purchasing marijuana and the possession of same was corroborated by both the Roadmaster and the Police and Special Services Outpost Sergeant. Claimant also admitted that he had been drunk. The record reflects a plea bargaining arrangement to which the State dropped the charge of intent to deliver cannabis. Having almost a half of pound of marijuana in one's possession when apprehended is, to say the least, most unusual.


The nature of the charge in the circumstances are not such that Carrier's Employees Assistance Program becomes or is available. Drugs in the railroad industry are the subject of the nation's attention and complaints including those from the National Transportation Safety Board. This Carrier has taken a hard line on enforcing its drug policy which has been upheld in litigation.


The Claimant was guilty of conduct unbecoming an employee.

In the circumstances, the discipline is not found to be unreasonable. This claim will be denied.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


L. F. Miller, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued July 27, 1989.