

PUBLIC LAW BOARD NO. 2120

NORFOLK AND WESTERN RAILWAY COMPANY

AND

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
System Council No. 25

STATEMENT OF CLAIM

Claim on behalf of J. Liggins, Jr. as a result of the Carrier dismissing Mr. Liggins from all service with the Carrier.

CLAIM OF EMPLOYEE

1. That the Norfolk and Western Railway company be ordered to reinstate Mr. Liggins to service with the Carrier as an Electrician at the Lambert Point Car Shop.

2. That the Carrier be ordered to compensate Mr. Liggins for all lost wages that resulted in his dismissal from the services of the Carrier and reinstate his seniority unimpaired with all vacation rights and other fringe benefits and clear his personal record of any and all charges shown in his record. (Claim as stated in the organization's submission)

DISCUSSION

This Public Law Board finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

Claimant, J. Liggins, Jr., was notified by mail dated August 12, 1982 that he was dismissed from the service as a result of the investigation of held on July 20, 1982.

The Board has considered the entire record in this case including the record of the investigation, the position papers submitted prior to the Board's convening on Wednesday, April 13, 1983, the statements of J. Liggins and his counsel during the Board's session and all exhibits provided by the Organization and the Carrier relating to the subject case.

Upon this record, the Chairman and Neutral Member of the Board finds as follows:

The Claimant was dismissed under the Carrier's General Rule G, quoted below:

"G. the use of alcoholic beverages, intoxicants or narcotics by employees subject to duty, or their possession or use while on duty or on Company property is prohibited."

Specifically, the Claimant was dismissed upon the findings of the Carrier's Protection Department and his admission that he had participated in the smoking of a marijuana cigarette on company property during the Claimant's lunch period.

No dispute exists as to the real facts of this case.

A few of the employee allegations are addressed as follows:

1. that a penalty of dismissal is to severe a penalty for the violation of the Carrier rule involved;
2. that Rule G is too broad a rule for application to this situation;
3. that the Claimant was coerced or tricked into his agreement that he had participated in the smoking of a marijuana cigarette; and,
4. that the Claimant was not provided representation during the initial investigation of the incident.

Without addressing all of the above in detail, it is an acknowledged fact that the Claimant participated in the incident giving raise to his dismissal. It is further acknowledged that the Claimant was cooperative with the Carrier representatives who conducted the initial investigation.

Rule G, as read by the Chairman, is clear and unambiguous. It definitively covers this specific situation. It is further an established and acknowledged fact that the problem of narcotics and drugs and their control in the railroad industry is of paramount importance to the safeguarding of equipment, the safety of employees and the safety of the communities through which rail transportation moves.

The allegation of no representation is without foundation in that delay in investigation of any number of employee relations problems would be tantamount to delays over which the Carrier had no control. Unwarranted and for

It is true than an employee is entitled to representation where a delay would not impinge upon an effective and objective investigation of an incident but where timeliness is of significance and where delay would pose an undue burden upon the Carrier and the employee, no immediate representation is mandated.

The practices of Carrier investigations in this industry are well defined and accepted by the parties thereto.

With regard to the coercion or trickery inference, it cannot be considered seriously based upon the record of the investigation.

The objective examination of the record of investigation reveals that the Claimant did in fact participate in the smoking of a marijuana cigarette by his own admission and that marijuana seeds were present in his personal car.

The penalty of dismissal is not considered excessive or harsh or undeserving under the total circumstances of this case.

AWARD

The claim is denied.

RECOMMENDATION

It is the view of the Chairman that certain circumstances of the Claimant's work record require a special consideration. Accordingly, it is the recommendation of the Chairman that the Carrier Member take any action that will provide an opportunity for the prompt return of the Claimant to employment with the N & W as a new hire.

This award dated this 18th day of April, 1983.


Jack W. Cassle, Chairman and Neutral Member


W. L. Allman, Jr., Carrier Member


V. T. Wilkins, Organization Member