

PUBLIC LAW BOARD NO. 2556

Award No. 27

Case No. 33
File No. MW-394

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Railway Company

Statement

of Claim: Claim on behalf of Former Reclamation Supervisor
O. M. Shewbart asking that he be allowed to exercise
his seniority in accordance with the Maintenance of
Way Agreement and that he be paid for all time
lost as a result of his dismissal effective
November 15, 1981 for violation of Operating Rule G.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 17, 1979, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, was formerly employed as the Reclamation Supervisor, a non-agreement supervisory position, at Carrier's Norris Yard at Irondale, Alabama.

Prior thereto he held positions under the scope of the Agreement represented by the BMWE and, under Rule 43 - Promotion to Official Positions, Claimant was not considered subject to such rules but accumulated seniority thereunder. Said rule, however, explicitly states that men dismissed under charges from such non-agreement or higher positions are not thereby required to be restored by reason of accumulation of seniority to service or permitted to exercise such seniority.

Carrier police, on several dates in September and October 1981, had received telephone calls from a confidential source, calls from the Alabama Bureau of Investigations and the Chief of Police of Leeds, all such calls advising that Claimant had been allegedly transporting marijuana

in a Company vehicle (a truck) assigned to him between Irondale and Parrish, Alabama.

As a result thereof, Lieutenant Bierd and Sargeant Vardaman of Carrier's police department, on October 22, 1981, went to Norris Yard about 7:30 AM, inspected the truck assigned to Claimant, and found therein a bag containing several unidentified capsules, tablets and a plant-like material suspicioned to be marijuana. The bag was placed back in the truck. Claimant appeared thereat and was advised as to what had been found in the vehicle. Claimant stated that he did not know how it got in there.

Lieutenant Bierd advised Claimant that he, Bierd, could either notify the Division Engineer and handle it in-house or make an arrest and handle the matter downtown. Claimant indicated his choice and requested that the Lieutenant notify the MofW Division Engineer. Division Engineer J. P. Thomas was notified and came to the scene. After being removed from service by said Division Engineer, pending an investigation, Claimant was alleged to have advised Mr. Thomas that he was "sorry."

The substance removed from said vehicle was later transported to Jacksonville State Crime Lab where the "plant-like material" was determined to be marijuana. Analysis of the pills revealed no controlled substances.

Subsequently, Claimant was notified, under date of November 2, 1981, to attend a formal investigation on November 5, 1981 on the charge of violation of Operating Rule G. Although advised to bring representation, Claimant appeared, apparently, with his attorney but without Union representation. After the investigation commenced on November 5th, it was recessed on Claimant's advice that he did not have Union representation but did desire to have same. It was rescheduled, postponed and finally held on November 19, 1981. As a result thereof, Carrier concluded Claimant to be guilty as charged. He was dismissed from service as discipline therefor.

The Board finds that Claimant was accorded the same due process provided for in Agreement Rule 40 - Discipline and Differences, which

Claimant would otherwise have been accorded had he been working under the Scope of the BMW Agreement when found in violation of Operating Rule G.

There was sufficient evidence adduced to support Carrier's conclusion as to the charge placed against him. There was no showing had of animus on the part of any of the witnesses appearing against Claimant. Nor was there any inference or representation made in that connection. Thus, the allegations that the evidence against Claimant "might have been planted" in his truck must fall as being sheer speculation. Having found Claimant guilty then to Rule 43 (b) of the BMW Agreement specifically recognizes that:

"The above shall not require the men dismissed under charges from higher position be restored to service or permitted to exercise seniority."


and provides no contractual basis for Claimant's restoration to service. This is particularly so when drugs are involved. The offense with which Claimant was charged and found guilty of violation of Rule "G" is considered a most serious violation in this industry. This Carrier has consistently taken a strong and unequivocal position as to the possession and use of narcotics. It consistently dismisses employees who are proven guilty thereof. See, for instance, NRAB Second Division Award Nos. 8052 and 8872, Third Division Award No. 21949, on this property.

In the circumstances the Board must conclude that Carrier had not acted arbitrary or capriciously in dismissing Claimant for a proven violation of Operating Rule G. The discipline assessed is deemed reasonable. This claim will be denied.

Award: Claim denied.


Bryce L. Hall, Employee Member


D. N. Ray, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member