

PUBLIC LAW BOARD NO. 2774

Award No. 65
Case No. 101

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM

- "1. That the dismissal of Trackman S. D. Williams, was without just and sufficient cause, and based on unproven charges. Said dismissal being excessive and in abuse of discretion.
2. That claimant now be returned to his former position with compensation for all time lost and seniority and all other rights restored unimpaired and that the charges be stricken from his record."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant, who had been employed with Carrier since April 18, 1980, received a notice of formal investigation which was held on March 22, 1982. The purpose of the investigation as indicated in the notice from Carrier to claimant was to investigate the possible falsification of claimant's application for employment, as well as his alleged possession of marijuana in his automobile on Company property on February 17, 1982. On March 29, 1982, following the investigation, having been found guilty of the charges, claimant was dismissed by Carrier.

Rule 6 provides as follows:

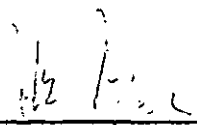
"The use of alcoholic beverages, intoxicants, or narcotics by employees subject to duty or their possession or use while on duty, or on Company property, is prohibited."

The record of the investigation indicates that a special agent of Carrier found marijuana in claimant's automobile on the job where he was working. The vehicle at the time was parked on Carrier's property when the special agent investigated the alleged possession of marijuana by claimant. Claimant denied that he violated Carrier's rules or that he had marijuana in his possession at the time. In a number of areas his testimony conflicted with that of the special agent. It is well established that conflicts of testimony with respect to matters such as this must be resolved by the hearing officer, not by a Board, such as that herein. It is clear that the Hearing Officer credited the testimony of the special agent and not that of claimant. Thus, as the record stands, it is apparent that there was sufficient evidence to establish without question that claimant was in possession of marijuana on the day involved.

It has long been held that management has the right to dismiss employees for possession of drugs or intoxicants on either their person or their vehicles while on company property. The dismissals have been for possession, as well as use, of such material. In fact, on the same property between the same parties in Public Law Board 1582, Awards 175, 176 and 209, confirm that general principle. In this instance, the evidence is clear that claimant was afforded a fair investigation and that there was sufficient evidence to justify Carrier's conclusion that he was in possession of marijuana in violation of Rule 6. The disciplinary action cannot be tampered with under these circumstances.

AWARD

Claim denied.


I. M. Lieberman, Neutral-Chairman


C. F. Foose, Employee Member


G. M. Garmon, Carrier Member

Chicago, Illinois

July 23, 1984