

PUBLIC LAW BOARD NO. 2908

Award No. 7

Case No. 7

Parties Brotherhood Railway Carmen of the U. S. & C.

to and

Dispute Norfolk and Western Railway Company

Statement of Claim That in violation of the Current Agreement, Carman T. D. Bray, R. S. Gerych and G. Lyons were unjustly dismissed from services of the Carrier the Norfolk and Western Railway Company, following a formal investigation held on October 29, 1979.

2. That accordingly the Norfolk and Western Railway Co., be ordered to reinstate, Carmen T. D. Bray, R. S. Gerych and G. Lyons.

a - to service with all seniority rights, vacation rights and all other benefits that are a condition of employment unimpaired with compensation for all lost wages plus 6% annual interest.

b - be reimbursed for all losses sustained, account loss of coverage of Health and Welfare and Life Insurance Agreements during the time held out of service.

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 January 29, 1981, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimants in the instant case were employed as temporary carmen at Detroit, Michigan.

The instant dispute arose from the dismissal of Claimants from all service of Carrier on November 15, 1979 following a formal investigation held on October 29, 1979 to determine their responsibility in connection

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with being in possession of, and use of, marijuana while on duty at the Allen Road Repair Track on Tuesday, October 16, 1979.

The evidence in the transcript against Claimants consisted of the testimony of R. D. Binkley, General Car Foreman, who testified that as a result of several injuries on the repair track during the afternoon shifts he took it upon himself to conduct an investigation into allegations that there was a marijuana smoking problem on the repair track.

Supervisor Binkley, on the date in question, then went out to the particular site and conducted a surveillance-type observation of Claimants. During the course of the surveillance he noticed Claimants smoking both at a MacDonald's adjacent to Carrier's property and continuing to smoke up until the time that he approached them, whereon a cigarette was thrown to the ground and was retrieved by Binkley. Binkley testified that he smelled the odor of burning marijuana. He observed Claimants passing a cigarette (prior to being thrown to the ground) amongst themselves.

Binkley retrieved the discarded cigarette, advised Claimants that they were being taken out of service, submitted the cigarette to the State Police Laboratory for analysis, received a report back indicating that the substance submitted was in fact Cannabis sativa.

Claimants denied smoking marijuana. Claimants testified that they were smoking cigarettes - filtered cigarettes - that there was no cigarettes being passed back and forth, except when one of the men was getting a light from the lit cigarette of another.

The Board has reviewed the testimony contained in the transcript and finds that Claimants were ably and aggressively represented, that the Carrier witnesses were thoroughly cross-examined, and that there was sufficient probative evidence to support the conclusion of rule violation.

In the circumstances, a violation of Rule G involving a narcotic drug warranted dismissal from Carrier's service. Both the public and Claimants' fellow employees require the ultimate protection from the egregious acts complained of herein. Dismissal was neither capricious nor excessive in the instant case.

We are impelled to conclude on the record that the claim must be denied.

Award Claim denied.

C. E. Wheeler
C. E. Wheeler, Employee Member

E. N. Jacobs, Jr.
E. N. Jacobs, Jr., Carrier Member

A. Thomas Van Wart
A. Thomas Van Wart, Chairman
and Neutral Member