

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Foreman D. L. Beck for alleged possession of marijuana while on Carrier's property was without just and sufficient cause and wholly disproportionate to such a charge. (System File 4A-711)

(2) Foreman D. L. Beck shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

OPINION OF BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the employees and the Carrier involved in this dispute are respectively employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute involved herein.

At the time of dismissal Claimant was employed as a Foreman at the Carrier's welding plant at Tama, Iowa. He had approximately eight years seniority.

On January 15, 1980 the Carrier sent a letter to Mr. Beck directing him to appear at an investigation in connection with the following charge.

"Your responsibility in connection with the alleged violation of Rule G of the CNW Transportation Company regulations and safety rules on January 14, 1980 at Tama welding plant, Tama, Iowa."

The hearing was held January 22, 1980 and as a result the Claimant was dismissed.

The incident that led up to the charge occurred after the Carrier received information that certain employees were using drugs, namely marijuana, while on duty. On January 14, 1980 the Claimant reported for work and was confronted by Inspector of Police Dale Walrod and Police Lt. William Adams. The Claimant was asked to empty his pockets and voluntarily did so. In one of his pockets was a small tinfoil packet which contained a substance thought to be marijuana. Rule G of the Carrier rules states:

"The use of alcoholic beverages or narcotics by employees subject to duty is prohibited. Being under the influence of alcoholic beverages or narcotics while on duty or on Company property is prohibited. The use or possession of alcoholic beverages or narcotics while on duty or on Company property is prohibited."

In reviewing the evidence there is found conclusive evidence that the Claimant was in possession of marijuana and thus that he violated Rule G. Lt. Adams testified that Mr. Beck admitted at the time of the search that the packet contained marijuana. Adams also testified that the substance was tested and that the results were positive that it was marijuana. Further, Beck himself testified that the tinfoil packet <sup>al</sup> eluded to in the testimony of Adams and Walrod was found on his person. He further testified that he knew it contained marijuana.

However, the Organization argues that the Claimant wasn't aware that he possessed the packet. The Claimant stated:

"And my girl friend put this in my pocket and she said hold this for me. Ok, Monday I put on the shirt, went to the plant and later pulled it out of my pocket and I was just as surprised as they were."

They further argue that because he wasn't aware that the packet was there he can't be found guilty of Rule G. This argument is without foundation in the record. The evidence indicates he was aware or should have been aware that the marijuana was there. He remembered that his girl friend put the packet in his pocket and at another point testified he knew the packet contained marijuana.

The Organization argues that assuming *arguendo* the Claimant was aware of the packet and knowingly brought it on the property that dismissal was excessive. They direct our attention to several awards in support of this argument. Most similar to this case is Award Number 13 of Public Law Board 1582. In this case the Neutral reinstated without backpay an employee discharged for possession of marijuana while on duty. However, Award 13 of PLB 1582 can be significantly distinguished from the instant case. The dismissal in that case was mitigated because there was doubt as to whether the Claimant was aware he possessed marijuana. There was corroborative evidence that the Claimant wasn't aware he possessed marijuana.

In this case there is no such doubt and we see no reason not to follow the well established precedent in the railroad industry that discharge for employees found to be in possession of marijuana or other drugs while on duty is neither arbitrary or capricious.

AWARD

Claim denied.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Date: OCT 26, 1981