

PUBLIC LAW BOARD NO. 3460

Award No.23
Case No. 23

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Burlington Northern Railway Company

STATEMENT
OF CLAIM

- "(1) The dismissal of H. N. Garton, laborer, July 10, 1980, was without just and sufficient cause and wholly disproportionate to the alleged offense.
- (2) Laborer H. N. Garton be reinstated with all seniority and other rights unimpaired, compensated for all time lost and this dismissal be removed from his personal 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 was charged with possession of marijuana in violation of Rule G and, following an investigation, was dismissed from service. The record indicates that on June 12, 1980, in the evening, claimant's foreman, entering an outfit car, discovered claimant sitting at a table with certain smoking material ("unusual green leaves"), a surgical tweezer and a butt of a partially smoked cigarette in front of him. Subsequently the smoking material was identified by laboratory as being marijuana.

The Organization, after a number of procedural arguments, none of which are supported by evidence, insists that claimant was not guilty of the offense charged and had not smoked any marijuana on the night in question. Carrier notes that claimant had been found guilty of a similar charge involving Rule G and had been reinstated on a leniency basis only a few months prior to the incident herein. Carrier states that its action in dismissing claimant in view of his prior record, short

service and the seriousness of the charge was amply supported by the evidence obtained at the investigation.

The Board finds that there was a fair investigation accorded claimant with respect to the charges involved in this matter. The evidence at that investigation established without much doubt that claimant was in possession of a controlled substance in his outfit car on Company property on the night in question. Whether he smoked the marijuana or not is immaterial. In view of the nature of the infraction and his short service and the fact that he had only recently been reinstated on a leniency basis for a similar offense persuades the Board that there is no question but that the discipline of dismissal was appropriate in this instance. It cannot be considered to have been harsh, discriminatory or in abuse of discretion. The claim must be denied.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman


W. Hodynsky, ~~Barrier~~ Member
F. H. Funk, Employee Member

St. Paul, Minnesota

May 22, 1985