

PUBLIC LAW BOARD NO. 3460

Award No. 45

Case No. 45

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employes
and
Burlington Northern Railroad Company

STATEMENT
OF CLAIM

- "1. The dismissal of Sectionman K. H. Lavender for alleged violation of Rule G was without just and sufficient cause on the basis of unproven charges.
2. The claimant to be returned to service with seniority and all other rights unimpaired, his record cleared of the charge leveled against him and compensated for all wage loss suffered."

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.

This dispute is a companion to that contained and described in Award No. 44 of this Board. The circumstances were identical. There was an attempt by Carrier to deal with alleged use of drugs by the crew involved and a raid was conducted in conjunction with the Sheriff's Office. In the course of that raid, the Carrier's Special Officers, together with the Sheriff's police, searched the bunk car and locker occupied by claimant (as well as that of claimant in Award No. 44). In claimant's locker, the Special Officers confiscated three pipes, a roach clip, a plastic tray and a few seeds which appeared to be marijuana. The claimant admitted that the items were his and that the locker in which they were found was his, as well. Following an investigation, claimant was found to be in violation of Rule G and dismissed from service.

In essence, the Organization argues that among the items which were clearly those belonging to claimant were several articles of paraphernalia associated with the use of marijuana. However, it was clear, according to petitioner, that there was no evidence whatever that the claimant had in his possession (or his locker) marijuana. Additionally, the evidence is also clear that claimant was not

under the influence of any narcotic or alcohol at the time of the raid. The Organization notes that while it is clear that the pipes confiscated from claimant's locker had indeed been used for marijuana in the past, there was no marijuana in his possession on the day of the incident. Furthermore, he was not charged by the Sheriff's Office with possession of marijuana on the date of this incident, as was the other employee involved in Case No. 44. For this reason, the Organization insists that Carrier has failed in its burden of proving a violation of Rule G.

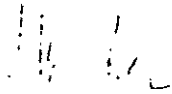
Carrier indicates that although claimant was found to be in possession of marijuana (a few grains), it was not of sufficient quantity to be considered a criminal offense. Carrier argues, however, that Rule G does not contain a quantitative factor with respect to the amount of the narcotic found in an employee's possession. Furthermore, there is no analogy between the Carrier's rules and criminal standards of conduct. Carrier points out that the Deputy Sheriff indicated that although claimant was not found to be in possession of a usable amount of marijuana, he was still found in possession of marijuana. Furthermore, claimant admitted that the two pipes and other materials had been used in the smoking of marijuana in the past by him. The pipe was scraped as well and a test run on the residue which proved, in fact, to be marijuana. Carrier argues that claimant was clearly in violation of Rule G by having in his possession while on Company property a narcotic. In view of claimant's short service and the nature of his infraction, Carrier felt that termination was the only appropriate remedy in this instance. Furthermore, Carrier notes that claimant refused to follow the program outlined for him by the Employee Assistance Counselor for possible reconsideration of Carrier's discipline. Carrier relies in part on Award No. 4 of Public Law Board No. 2909 involving a virtually identical problem. In that award, Carrier notes, the possession of drug paraphernalia containing even the most minute amount of drugs, should not be tolerated in the industry. In that award, of course, the Board found that the claimant was guilty of violation of Rule G.

It is this Board's view that the principles enunciated in Award No. 4 of Public Law Board No. 2909 are valid and applicable to the situation involved in this dispute. The Board, in the award cited, indicated that the possession of drug paraphernalia discloses a complete lack of regard, not only for the carrier, but for carrier's equipment and claimant's co-workers. The board went on to find that a drug user or anyone possessing drugs should not be allowed any latitude whatever or the benefit of the doubt for purposes of evading discipline.

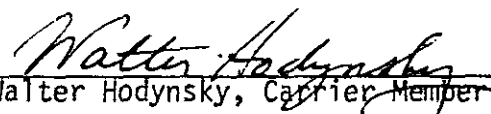
This Board finds, consistent with the thinking of the award cited, that the intent of Rule G is for the purpose of prohibiting drugs of any kind on Carrier property. That prohibition includes minute quantities of drugs and drug paraphernalia in which the drug residue may be found, as the Board views it. Thus, in this instance, Carrier was eminently justified in its conclusion and the claim must be denied.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman



Walter Hodynsky, Carrier Member



F. H. Funk, Employee Member

St. Paul, Minnesota
July 31, 1986