

Public Law Board No. 3794

Parties to Dispute:

Brotherhood of Maintenance
of Way Employees

and

Seaboard System Railroad

Statement of Claim:

Trackman D. Freeman was dismissed without cause and shall now be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

Findings:

On the morning in question Claimant was working as an apprentice forman under Roadmaster White's supervision.

During that morning, and after reporting for duty, it was discovered that claimant was not at his assigned work location. About 20 minutes later, according to the Roadmaster's testimony, he observed Claimant and Trackman Maddox sitting in the cab of Claimant's own truck. White testified that they were passing a cigarette back and forth, taking turns smoking it.

When White approached the truck and told the two men to get out, he noticed, he testified, that the odor was not of ordinary cigarette smoke. Upon searching the truck, White found a hand rolled cigarette between the two seats.

It is White's testimony that when he confronted the two men with the remainder of the cigarette he had found, they told him that they were not hurting anybody by smoking the cigarette and it

would make them work better. White testified that they asked several times for White to forget what they had done and not to report them.

The remainder of the cigarette that White had discovered in the truck was tested by the Georgia State Crime Laboratories; it reported that its contents were marijuana.

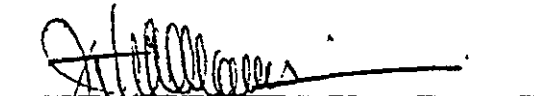
White's testimony is credible and specific. We are unimpressed by Claimant's belated explanation that White had observed the two men passing a candy bar, and not a cigarette, back and forth.

Carrier's findings are supported by substantial proof. No valid basis exists for setting them aside.

Award: Claim denied.

Adopted at Jacksonville, Florida, *November 6* 1985.


Harold M. Weston, Chairman


Carrier Member


Employee Member