

PUBLIC LAW BOARD NO. 4338

PARTIES) UNION PACIFIC RAILROAD COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

(1) The discipline/dismissal assessed Idaho Division Extra Gang Laborer Eli Otero for alleged violation of company rules as indicated in Mr. G. W. Thompson's letter of September 7, 1988 was arbitrary, capricious and unwarranted.

(2) The claimant's record shall be cleared of the discipline referred to in Part (1) and he shall be compensated for all time lost.

FINDINGS: This Public Law Board No. 4338 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was charged with delivery of and possession of cocaine and marijuana on March 15, 1988. Carrier alleges they first became aware of the charge on August 8, 1988 and notified the claimant at that time there would be a hearing in Pocatello, Idaho at 10:00 a.m. on August 18, 1988 to develop the facts and place the responsibility for his being charged with delivery and possession of cocaine and marijuana on March 15, 1988.

The evidence and testimony of record establishes that the claimant was arrested and charged with suspicion of possession and/or delivery of narcotics. At the time the claimant pled not guilty but on or about August 8, 1988 the claimant was recalled to service by S. A. Coombs, Manager of Track Maintenance.

At that time Mr. Coombs became concerned about the result of the claimant's arrest and directed Special Agent D. D. McCartney to determine the results of the charges. Mr. McCartney reported to Mr. Coombs that the records of the District Court of the Sixth Judicial District, State of Idaho established that on July 5, 1988 the claimant changed his plea of not guilty to guilty of possession.

The claimant stated that although he pled guilty to the charge of delivery and possession of cocaine and marijuana, he was not actually guilty but was placed in the position of pleading guilty to one charge because if he had not pled guilty, other charges would have been filed against him.

This statement has no relevance in the instant case. The claimant pled guilty to a serious charge. Under those circumstances there

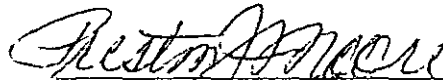
was sufficient evidence that the claimant was guilty as charged, and the Carrier had just and sufficient cause to discharge him. It is immaterial under the circumstances whether the claimant was convicted of a crime. He pled guilty to a crime which constituted a violation of General Rules A, B, G, and 607, and such justifies discharge under the agreement between the parties.

It is unnecessary that the claimant have possession of marijuana or cocaine on Company property. The violation herein was of sufficient enough gravity for the Carrier to discharge this employee.

The Board recognizes that the claimant's ability to maintain his employment with the railroad is related to the withheld judgment in that his ability for continued employment with the railroad would give him the ability to pay a fine.

At the time the claimant entered the plea of guilty, justification for discharge existed, and future plea bargaining did not alter that condition. Possession, use or distribution of a controlled substance is a very serious offense upon the railroad and cannot be justified under any circumstances. The Carrier had just and sufficient cause to discharge the claimant.

AWARD: Claim denied.



Preston J. Moore, Chairman



Union Member

February 3, 1989



Carrier Member