

PUBLIC LAW BOARD NO. 4402

PARTIES)
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
) BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM

- (1) The dismissal of Truck Driver R. K. alleged violation of General Rule G was unwarranted, without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System File #10 Gr./10 DI - R. K. Nolan).
- (2) The Claimant shall be reinstated to service with seniority and all other rights unimpaired, his record cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

OPINION OF BOARD

As a result of charges dated April 9, 1985, investigation held on April 18, 1985 and by letter dated April 26, 1985, Claimant, a truck driver with eight years of service, was dismissed for violation of Rule G for allegedly being under the influence of marijuana.

On April 8, 1985, Claimant was instructed by his foreman to drive his vehicle to a crossing and then drive the truck off the tracks. Rather than drive to the crossing as instructed, approximately 600 feet from the crossing Claimant drove off the track and proceeded down a grade into a swamp where the truck was damaged and became stuck. In accord with the Carrier's request made as a result of the incident, Claimant submitted a urine sample for drug tests which tests showed positive for THC (marijuana). Claimant admitted during the investigation that he uses marijuana.

Initially, we have examined the transcript of the investigation and we do not find that Claimant was deprived of a fair and impartial investigation.

With respect to the merits, the parties make the same arguments in this case as were made in Award 6 of this Board concerning the drug tests. For the same reasons articulated by us in that award, and again, without prejudice to the parties' respective positions, we are

of the opinion that substantial evidence exists in this record to support the Carrier's conclusion that Claimant violated Rule G.

However, in this case we are not of the opinion that dismissal was unwarranted. This incident was Claimant's sixth disciplinary offense and his second Rule G violation. Claimant's record shows several suspensions as a result of prior misconduct. Under the circumstances, we are of the opinion that dismissal was neither arbitrary or capricious.

AWARD

Claim denied.



Edwin H. Benn
Neutral Member



E. J. Kallinen
Carrier Member



P. S. Swanson
Organization Member

Denver, Colorado
December 7, 1988

