

PUBLIC LAW BOARD NO. 4402

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

STATEMENT OF CLAIM

- (1) The dismissal of Group 5 Machine Operator R. L. Rothwell for alleged violation of Rules 565 and 566 '... for possession of marijuana while on Company property, and for being under the influence of marijuana while performing service as Group 5 Machine Operator on June 3, 1985....' was improper, without just and sufficient cause and an abuse of the Carrier's discretion (System File Reg. Gang/Gr. 10 DI - R. L. Rothwell).
- (2) The Claimant shall be reinstated with seniority unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

OPINION OF BOARD

Claimant, an employee since June 4, 1979, was employed as a Group 5 Machine Operator. After investigation held on June 12, 1985 and by letter dated July 3, 1985, Claimant was dismissed from service for rule violations including allegations of possession of marijuana while on the Carrier's property.

On June 2, 1985, Claimant was arrested by the Nebraska State Police for a third offense of driving while intoxicated and possession of marijuana. The record reveals that after learning of the arrest, on June 3, 1985, inquiry was made of Claimant by Carrier representatives. Claimant then admitted that he had marijuana in his possession on the Carrier's property. After obtaining Claimant's consent, a search of Claimant's vehicle revealed marijuana seeds and a pipe. Further search of Claimant's bunk car revealed a plastic bag in Claimant's locker which also contained marijuana.

Aside from the testimony of concerning Claimant's admissions and the results of the search, Claimant testified as follows:

Q. Mr. Rothwell, do you use marijuana?
A. Yes, I have.

* * *

Q. You have heard the testimony that Mr. Stairs found some marijuana and also a marijuana pipe in your belongings, do you take any exception to that testimony?
A. No.

Q. Were the bunk car and your automobile at the time you were searched, on company property?
A. Yes.

* * *

Q. Did you have marijuana on your possession or on company property in your belongings on company property?
A. Yes, he did find it on company property on the bunk cars.

* * *

Q. ... It has been brought out in testimony and entered into the transcript that marijuana was found on the bunk car in your clothing and also that a marijuana pipe was discovered or found, I believe, in your automobile. Did these belong to you?
A. Yes.

Q. In other words, they were in your possession?
A. Yes.


Rule 565 prohibits possession of marijuana while on the Carrier's property. In light of the above, substantial evidence exists to conclude that Claimant violated that rule. Under the circumstances, we do not find dismissal to be arbitrary or capricious.

AWARD

Claim denied.


Edwin H. Benn
Neutral Member


E. J. Kallinen
Carrier Member


P. S. Swanson
Organization Member

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