

PUBLIC LAW BOARD NO. 4426

BROTHERHOOD OF MAINTENANCE OF :
WAY EMPLOYEES :
"Organization" :
VS. : Award No. 1
CENTRAL VERMONT RAILWAY, INC. :
"Carrier" :

STATEMENT OF CLAIM:

Claim of the Brotherhood that:

(a) Carrier's dismissal of Claimant D. M. Poissant was arbitrary and capricious, being based upon vague and unproven charges, at a hearing which was not held in a timely manner.

(b) Carrier shall restore Claimant Poissant to service, with full seniority and vacation benefits, and compensate Claimant for all lost wages, including overtime, as provided for in Rule 27-A of the Scheduled Agreement.

OPINION OF THE BOARD

Claimant, D. M. Poissant, was dismissed by letter of July 19, 1985, which stated as follows:

This is to advise you that you are dismissed from the service of the Company for violation of "G" of the UCOR.

"The use of intoxicants or narcotics by employees subject to duty, or their possession or use while on duty, is prohibited."

Also for violation of Rule 3000 of the Central Vermont Railway Safety Rules, which states:

"The use of intoxicants or narcotics by employees subject to duty, or their possession,

or use while on duty, is prohibited."

Also, for violation of Rule 3(a) and 3(b) of Central Vermont General Rules for Employees Not Otherwise Subject to the Rules for Conducting Transportation:

"3(a) Employees use or possession of intoxicants or narcotics while on duty or while on company property is prohibited."

"3(b) Employees shall not report for nor be on duty, at any time, under the influence of intoxicants or any other substance whatsoever (including those prescribed for them for medical reasons) that will in any way adversely affect their alertness, coordination, reaction, response or ability to work properly or safely."

Upon being notified of his dismissal, Claimant requested a hearing, which was held on August 14, 1985. On August 22, 1985, Carrier informed Claimant by certified mail that his dismissal was confirmed. Appeal was made through various levels of the grievance procedure, and was declined at all levels. The hearing before this Board took place on February 29, 1988. Claimant was informed of the hearing before this Board by certified mail, but he did not appear.

Events triggering the Claimant's discharge took place on July 18, 1985. On that day, the Claimant was foreman of a track gang consisting of seven members. The gang was secretly observed between the hours of 0900 and 1640 by the Carrier's Chief of Police, J. B. Ovitt, and a private investigator. The Carrier engaged in this surveillance because of information received anonymously concerning alleged misconduct by the crew. As a result of activities allegedly observed by Ovitt and the

investigator on July 18, and information obtained in the resulting investigation, the Carrier believed that the Claimant had broken the above quoted Rules by smoking marijuana while on duty, purchasing and drinking beer while on duty, and encouraging others to drink by announcing that beer was in a truck.

The Carrier contends that the allegations against the Claimant are supported by substantial evidence in the record and that the claim should therefore be dismissed. The Organization maintains that the Claimant is not guilty as charged and that the Carrier committed numerous investigative and procedural errors that warrant setting aside the discipline imposed.

The Board has determined that the claim must be denied.

The record contains ample evidence to establish that the Claimant is guilty as charged. The Claimant's offenses were particularly inappropriate, as he was a foreman responsible for ensuring that the track gang conducted itself in a responsible manner. There are no arguments of mitigation that can successfully be raised on the Claimant's behalf. In these circumstances, the Carrier committed no investigative or procedural errors that warrant setting aside the discipline imposed. Accordingly, despite the Organization's strenuous arguments, the claim must be denied.

AWARD

Claim denied.

W E La Rue
W. E. LA RUE,
Organization Member

J. J. Welch
J. J. WELCH,
Carrier Member 4/12/88

S E Buchheit
S. E. BUCHHEIT,
Neutral Member