

PUBLIC LAW BOARD NO. 4426

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BROTHERHOOD OF MAINTENANCE OF  
WAY EMPLOYES

"Organization"

VS.

CENTRAL VERMONT RAILWAY, INC.  
"Carrier"

Award No. 2

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STATEMENT OF CLAIM:

Claim of the Brotherhood that:

(a) Carrier's dismissal of Claimant G. R. Desautels was arbitrary and capricious, being based upon vague and unproven charges.

(b) Carrier shall restore Claimant Desautels to service, with all seniority, and compensate each man for all lost wages as provided for in Rule 27-A of the Scheduled Agreement.

OPINION OF THE BOARD

Claimant, G. R. Desautels, 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 working on 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 and drinking beer while on duty.

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 be sustained in part.

There is no question but that the Claimant is guilty as charged, as he has openly admitted to smoking marijuana and drinking on duty. The gravity of these offenses is obvious. The Claimant's candor in admitting his misconduct, however, is impressive and a substantial mitigating factor. Given all the factors involved in this matter, and after careful consideration of all arguments raised by the Organization in the Claimant's behalf, the Board has concluded that the Claimant should be given an opportunity to rehabilitate himself and return to work.

The Board hereby establishes the following conditions that the Claimant must meet before being reinstated: within sixty (60) days of the date the Organization notifies the Claimant of this decision by certified mail, the Claimant must contact the Carrier and state that he will proceed to follow the terms of

this conditional reinstatement. If the Claimant does not contact the Carrier by the end of this sixty (60) day period, he waves all further rights to reinstatement. If the Claimant does make timely contact with the Carrier, he must then undergo a rehabilitation program that is mutually agreed upon by himself and the Carrier. Any cost associated with the program must be borne by the Claimant. If the Claimant successfully completes the rehabilitation program, as defined by the program itself, he shall report to the designated rehabilitation officer of the Carrier to be approved for return to work. Once approved, the Claimant shall be reinstated to his former position with full seniority, but without back pay.

#### AWARD

Claim sustained in part. Claimant shall be reinstated with full seniority but without back pay, only if he complies with all the requirements set forth in the above Opinion.

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

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

S. E. Buehheit  
S. E. BUCHHEIT,  
Neutral Member