

AWARD NO. 50

CASE NO. 68

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Bridge and Building Carpenter Willie Bridges was without just and sufficient cause and on the basis of unproven charges (Carrier File No. D-11-17-230).
- (2) Bridge and Building Carpenter Willie Bridges be reinstated with all rights unimpaired and compensated for all time lost, all in accordance with Rule 19(d).

OPINION OF BOARD:

Claimant was employed as a B & B Carpenter until his dismissal in December 1977. Claimant was charged in connection with the cocaine selling incident involving Mr. Otis Smith, the Claimant in Award No. 49 (Case No. 67).

Procedural objections regarding timeliness of the hearing are overruled in this case for the same reasons enunciated in Awards No. 48 and 49. Turning to the merits of Mr. Bridges' case, however, we find substantial factual differences which warrant a different outcome. Bridges, like the Claimants in Awards 48 and 49, was charged with possessing narcotics in violation of Rule G and G Appendix. Specifically, however, the other Claimants were charged with selling or pushing narcotics, while Claimant was accused of using the drug on the property. More importantly, however, the record simply does not establish that Claimant used any drug. Rather, at worst, it shows possession only.

The transcript of the hearing established in our judgment that Claimant and another employee, Mr. Jones, were present when undercover agent Stevens purchased a foil packet of cocaine from Otis Smith in Carrier's parking lot on August 2, 1977. All three employees, Smith, Bridges, and Jones, were terminated following a hearing. Smith was dismissed for possession and selling the cocaine, and we denied his claim for reinstatement in Award No. 49. Upon appeal by the Organization, Carrier reinstated Mr. Jones without back pay. Jones' suspension, rather than a dismissal, was on the ostensible ground that he was not involved in using or selling the narcotics but was culpable to a lesser degree for not reporting the incident. With respect to Claimant Bridges, however, Carrier on the property denied his appeal on the ground that the hearing transcript proved that Bridges "was present and ingested some of the cocaine". (Emphasis added.) The record evidence does convince us that Bridges was present and that he was given a pinch of the cocaine, but there is not one iota of evidence to show that he used it. The sole evidence on this point is the testimony of undercover agent Stevens as follows:

At that point of that transaction Mr. Bridges stated that he desired some of the cocaine in which he acquired a piece of newspaper, a small pinch of the substance was given to Mr. Bridges and I then departed that area at 4:10 P.M. that afternoon. That is the extent of my findings pertaining to the charges....

I observed no actual use of narcotics on that day.

Carrier may indulge in supposition, but so far as the record shows we do not know what Bridges did with the cocaine. Thus, viewing the record in terms of Carrier's best possible case against Claimant, we have possession only and no evidence of ingestion. We do not denigrate the seriousness of possession of a narcotic and we certainly do not condone it. In the

appropriate case mere possession might well justify dismissal. But to the extent that Carrier misread the record and based its decision to impose the maximum penalty on an erroneous finding of narcotic use as well as possession, we find that the dismissal should be reduced to a suspension without pay. Accordingly we shall order Claimant reinstated to service but without pay for time lost.

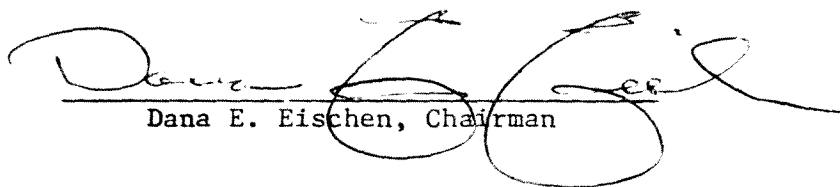
FINDINGS:

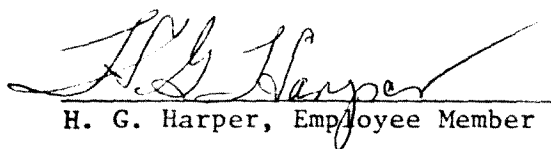
Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein; and
3. that the discipline imposed was excessive based upon the record.

AWARD

Claim sustained to the extent indicated in the Opinion.
Carrier is directed to comply with this Award within
thirty (30) days of issuance.


Dana E. Eischen, Chairman


H. G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Dated: June 14, 1979