

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
vs.
Norfolk and Western Railway Company

DLB 1537
ALLEN #5
NW RAIL 77-1

STATEMENT OF CLAIM:

1. Carrier violated the effective Agreement November 8, 1976, by dismissing from service Laborer Robert Waymire on charges unjustified, unwarranted and without proper cause.

2. Claimant Laborer Robert Waymire should now be afforded the remedy of Rule 22-(E).

FINDINGS: This Board upon the whole record and all the evidence finds:

The Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended.

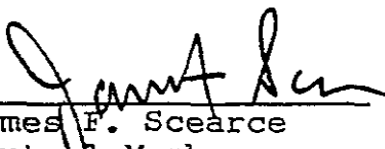
OPINION:

On October 21, 1976, the Claimant was observed by a supervisor and a member of the security force in a camp car located on Carrier property smoking a marijuana cigarette. Such event occurred about 7:30 p.m., at a time when the Claimant was off-duty. Upon inquiry, the Claimant readily admitted to the "type" of cigarette and just as readily surrendered other such cigarettes and a sack of marijuana to the Security officer, who had actually come to the camp car for other purposes. He was arrested, incarcerated, tried and found guilty by civil authorities of possession and use of a controlled substance.

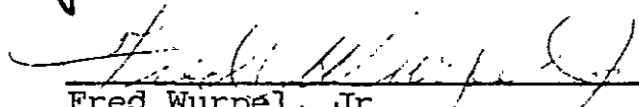
The Carrier makes a prima facie case that the Claimant

was in possession of and using a substance in violation of the law. It is also clear that such substance was being used on Company property. The Organization asserts that since the Claimant was off-duty, and that since the camp car is an employee's "Home-away-from-home," the Carrier has no authority to interpose its authority here. In any case, it asserts that removal is excessive and asks this Board to authorize another chance for the Claimant. We are not inclined to conclude that the Claimant's "casual" status at the time of his being observed smoking the "joint" nullifies the Carrier's right to act, given the situs of such use of marijuana. While the Organization makes an eloquent argument that the camp car is a substitute for an employee's residence, it cannot be overlooked that the Carrier's liability for the actions of such employees, while occupying such camp cars, must be considered. Consequently, an employee cannot claim immunity from certain actions on his part merely because he is off-duty where he is availing himself of the use of the camp car on Carrier property. One such improper action would be one that is clearly violative of established Carrier Rules and civil law. We shall not disturb the Carrier's decision to separate the Claimant from service.

AWARD: Claim is denied.


James F. Searce
Neutral Member


G. C. Edwards
Carrier Member


Fred Worpel, Jr.
Organization Member

Dated this 1st day of Feb., 1980 at Cleveland, O.