

PUBLIC LAW BOARD NO. 1850

Award No. 1

Docket No. 2

Org. File No. ERRG-1701

Carrier File No. 2-MG-1473

Parties Brotherhood of Maintenance of Way Employees

and to

Dispute Baltimore & Ohio Railroad Company

Statement of Claim: Claim filed on behalf of Eastern Regional Rail Gang Trackmen Ronald Lewis and Paul Lanhan for restoration of their seniority unimpaired and reimbursement for all time lost at the applicable rate of pay as a result of the discipline of dismissal administered to Messrs. Lewis and Lanhan following a hearing held on October 20, 1975, on charges of using narcotics and being intoxicated while subject to duty on October 9, 1975.

Findings: The Board finds, after hearing upon the whole record and all evidence, that the parties herein are Carrier and Employee within meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 27, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearings held.

Both Claimants, but particularly Claimant Lanhan, were cautioned during their lunch period on October 9, 1975 against "smoking dope." They were observed by their Foreman, as well as five (5) fellow workers "smoking dope" during their lunch period. Both Claimants were thereafter removed from service and told to take the day off.

An investigation was held October 20, 1975 on the charge of "using narcotics and being intoxicated while subject to duty...about 11:30 a.m. on Thursday, October 9, 1975." As a result thereof, both Claimants were found guilty as charged and dismissed from Carrier's service.

The function of a Board such as this in disciplinary matters has been well proscribed. Essentially, the Board acts as an appellate body. It reviews the record established below on the property. The Board initially ascertains whether due process was accorded the Grievant. Thereafter, it determines whether sufficient probative evidence was adduced to support Carrier's conclusions and, lastly, if proven guilty, whether the discipline imposed was unreasonable.

In the instant case, the Board finds that Claimants were accorded due process. The record provides sufficient credible evidence to support Carrier's conclusion that Claimants were using narcotics while subject to duty on October 9, 1975. The record essentially reflects that the Claimants' Foreman and four fellow employees had testified that Claimant Lanhan came to their group and asked for a match; that he was told not to smoke dope in front of the Foreman; that after Claimants finished their lunch they then lit a cigarette; that the cigarette did not appear to be a normal one; that it was rolled in cigarette paper; that it gave off a peculiar odor; that Claimant inhaled deeply and held it; that they passed the cigarette back and forth between themselves. When Claimants came back to the group, it was observed that Claimants' eyes were red and glassy. One of the witnesses testified that he had recently been trained by the National Guard on the subject of marijuana. The record indicates that several of the witnesses were street-wise and conversant as to marijuana and its use.

The Board does not find sufficient evidence to support a conclusion of intoxication. Nor does it find that a failure by Carrier to take Claimants' to a doctor was fatal. Such a visit would have ascertained, by medical certainty, as to the degree of influence of the marijuana on Claimants. Yet, such conclusion was not, in the circumstances present, necessary herein to permit of the imposition of discipline. Claimants were found to be guilty of using marijuana and being under the influence.

The record provides no reason to modify the discipline imposed. The gravity of the offense of using narcotics and its potential effects on the safety of the individual, his fellow employees, as well as the public, is epitomized by Award No. 8 of Public Law Board No. 1324 wherein Referee Moore stated:

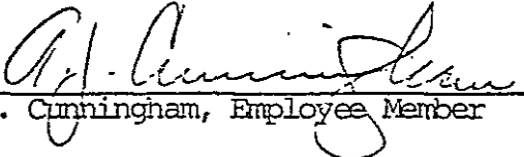
"A drug offense in this era is a grievous offense to a substantial majority of this country's population.

"Furthermore, an offense of this nature would have a serious effect upon fellow employees. Operating employees in this industry must be alert and have all their wits. They must also have the confidence and faith of their fellow employees. The fellow employees of the Claimant herein must have grave doubts and concern in working with this Claimant.

"Therefore, the Board must find that the possession of hallucinogens is conduct which impairs the usefulness and/or the competency of an employe in his assigned work period. The breach of moral standards and the behavior herein is to such an extent that the act severely impairs the relationship between the employe and the employer, as well as the relationship between the employe and his fellow employes."

We can find no reason to not follow this Award. In the circumstances, the Board is impelled to deny the claims herein.

Award: Claim denied.

  
A. J. Cunningham, Employee Member

  
L. W. Burks, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued at Atlanta, Georgia, June 9, 1977.