

PUBLIC LAW BOARD NO. 1850

Award No. 6

Docket No. 8

ORG File No. WRRG-1902

Carrier File No. 2-MG-1518

Parties Brotherhood of Maintenance of Way Employees

of and

Dispute Baltimore & Ohio Railroad Company

Statement of Claim: Claim filed on behalf of Western Region Rail Gang Trackman Bryan E. Leach for restoration of his seniority unimpaired and reimbursement for all time lost at the applicable rate of pay as a result of the discipline of dismissal administered to Mr. Leach following a hearing held on January 12, 1976 for conduct unbecoming an employee and for possession of and use of a hallucinogenic drug while on camp cars located on Railroad Company property at Grove City, Ohio leading to his arrest by Grove City Police at about 11:27 p.m. Tuesday, December 23, 1975.

Findings: The Board finds, after hearing upon the whole record and all evidence, that the parties herein are Carrier and Employee within the 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.

Claimant trackman was one of six (6) off-duty trackmen who were placed under arrest, and taken from their Camp Car located on railroad property by the Grove City, Ohio police for disturbing the peace. A subsequent search of the room in which they were arrested produced four (4) plastic bags containing 52 grams of cannabis sativa, commonly called "marijuana", a cigarette and a pipe, both containing marijuana. The civil charge originally placed against Claimant and his fellow employees, was "disturbing the peace". It was later amended by adding "possession of marijuana." However, such charge was subsequently dropped.

A Carrier conducted investigation on January 12, 1976 resulted in Claimant receiving the following:

"It has been found that you were at fault for conduct unbecoming an employee by participating in a disturbance on the camp cars to the extent that it was necessary for the neighbors to call the Grove City Police and you are at fault for possession of, and use of, an hallucinogenic drug while on camp cars located on railroad property at Grove

City, Ohio, which led to your arrest at about 11:27 p.m., Tuesday, December 23, 1975, in violation of Rule 14. The Engineering Department Rules, and the discipline administered is dismissal from the service of the Railroad Company."

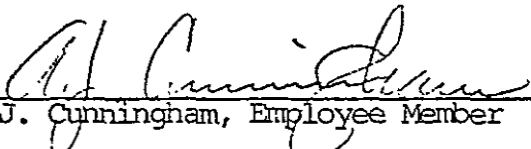
The Board finds that Claimant was accorded due process.

The record, including Claimant's self-admissions, provides sufficient support for Carrier's conclusion of guilt for the charge of conduct unbecoming an employee. Claimant admitted that he was in town drinking with his fellow trackmen who were also arrested. He also admitted hollering at a neighbor. Claimant was apprehended by the police in the compartment of Camp Car No. 114 from which the blaring noise from the stereo, as well as the hollering and swearing, was causing the neighbors to register complaints with the police of a public nuisance. The record supports the conclusion that Claimant was a participant in the making of the noise complained of by the neighbors and police. There appears to be doubt as to Claimant's possession and perhaps use of the confiscated marijuana despite the fact that "pot" had been smoked and found in the room in which Claimant and his partying fellow trackmen were gathered. The Board concludes that it is not necessary that the second charge be proven as either charge standing alone, if proven, would warrant the imposition of stern discipline.

In the circumstances, we find that the discipline imposed was not unreasonable.

The Board is constrained to deny the claim.

Award: Claim denied.

  
A. J. Cunningham, Employee Member

  
L. W. Burks, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member