

PUBLIC LAW BOARD NO. 2960

AWARD NO. 29

CASE NO. 40

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Foreman R. T. Floden for alleged violations of Rule G was without just and sufficient casue, unwarranted and excessive. (Organization's File 2D-2069; Carrier's File D-11-24-65)

(2) Foreman R. T. Floden shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the employes and the Carrier involved in this dispute are respectively employes and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute involved herein.

On June 25, 1981, the Claimant was directed to appear for a formal investigation in connection with the following charge:

"Your responsibility in connection with violation of Rule G on June 25, 1981, Des Moines, Iowa."

After several postponements, the hearing was held on July 7, 1981. Subsequent to the hearing on July 14, 1981, the Claimant was dismissed for violation of

Rule G. The pertinent portion of Rule G reads as follows:

"Except as otherwise provided below, employees are prohibited from reporting for duty or being on duty or on Company property while under the influence of, or having in their possession while on duty or on Company property, (1) any drug the possession of which is prohibited by law; (2) any drug belonging to the generic categories of narcotics, depressants, stimulants, tranquilizers, hallucinogens, or anti-depressants; (3) any drug assigned a registration number by the Federal Bureau of Narcotics and Dangerous Drugs not included in category (2); or (4) any liquid containing alcohol."

The charges were preferred in connection with the inadvertent discovery of pills in the Claimant's wallet by a supervisor. It was later determined that at least one of these pills was an illegal substance namely an amphetamine. Mr. K. L. Janovec testified as follows:

"At approximately 9:45 a.m. on June 25, 1981, I entered the Conference Room, which is located next to my office and I saw a billfold laying on the floor. I picked it up and took it back to my office and attempted to identify the owner. I noticed that there was a telephone bill that was sticking out of the money compartment and when I pulled out the telephone bill a small white pill fell on my desk. I became suspicious of that so I opened the billfold further and found three more pills inside. I then attempted to contact the Special Agents and was unable to do so at that time so I returned three of the pills to the billfold and kept one for the Special Agents. I was able to contact them a little later on and Mr. Walrod and his forces came over to my office. After I returned the three pills to the billfold, I asked Mr. Jones if he recognized the name on the telephone bill, Brian Floden, and he said "Yes, that it was his Weekend Section Foreman," so I turned the billfold over to him for delivery back to Mr. Floden ..."

Mr. Dale J. Walrod, Inspector of Police, testified that he received the pill from Mr. Janovec and performed a test on the pill which indicated that it was an amphetamine.

It is the conclusion of the Board that the evidence reviewed above is substantial and establishes a prima facie case against the Claimant. Moreover, it is the conclusion of the Board that the Claimant's defense fails to overcome the case against him.

The Claimant's defense was that he was unaware that the pills contained amphetamines. He testified that he was under the impression they were caffeine pills although they looked similar to amphetamine tablets sometimes known as "white crosses." There is substantial evidence to support the Carrier's conclusion that the Claimant was in fact aware that the tablets were illegal stimulants. This conclusion was based on the undisputed fact that after the wallet was returned to the Claimant, he flushed the remaining tablets down the toilet. The record contains an admission of this fact by the Claimant. It is not an unwarranted conclusion, on the Carrier's part, under the substantial evidence test, that such action establishes a presumption of guilt. The Claimant's explanation simply doesn't overcome this presumption.

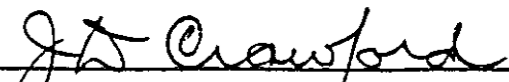
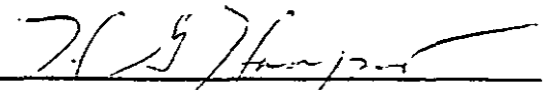
Regarding whether discharge is appropriate, it has often been stated that Rule G violations are serious and that discharge for such violations is not excessive. There is no basis in this record for disturbing the Carrier's decision.

AWARD

Claim denied.



Gil Vernon, Chairman


J. D. Crawford, Carrier Member
H. G. Harper, Employee Member

Date: Feb. 15, 1983