

Award No. 44

Case No. 44

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Burlington Northern Railroad Company

STATEMENT
OF CLAIM

- "1. The dismissal of Sectionman T. W. Schmidt for alleged violation of Rule G was excessive and wholly disproportionate to the charge leveled against him and in violation of the agreement.
2. That claimant shall be reinstated with seniority and all other rights and benefits unimpaired and he shall be compensated for all wage loss suffered."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant was a Sectionman assigned to Carrier's Steel Gang No. 7 headquartered in camp cars at Lyle, Washington. At the time of the critical incident in this dispute he had been in the Company's employment for less than three months.

On July 2, 1980, Carrier's special agents, together with Sheriff's Office personnel, searched the bunk car and locker occupied by claimant in the camp car in which he was residing and confiscated a package containing a substance later admitted to be marijuana. The claimant admitted that the package was his and that it contained marijuana. Claimant was removed from service and subsequently an investigation was scheduled and held on July 9, 1980. Following the investigation, based on the evidence produced at that hearing, claimant was dismissed by Carrier as being in violation of Rule G of Carrier in the possession of marijuana.

Rule G provides, inter alia, that the use or possession of alcoholic beverages or narcotics while on duty or on Company property is prohibited. The Sheriff's office found that claimant had been in possession of 3.6 grams of marijuana and subsequently

he was incarcerated for five days and fined \$100 for this act.

Petitioner asserts that while the evidence establishes that claimant had marijuana in his possession in the camp car, there was no evidence that he ever attempted to or intended to use the marijuana while performing his duties for Carrier, nor was there any evidence that he was under the influence of marijuana at the time of the search. Further, Petitioner notes that the criminal charge levied against claimant was only a misdemeanor with a minor penalty. Given the amount of marijuana which he was found to possess, which was much below the maximum allowable for a misdemeanor charge, and under the entire circumstances of this particular infraction, Petitioner argues that dismissal was excessive and wholly disproportionate in this case. Furthermore, the Organization maintains that there was no reason why the claimant should have been removed from service prior to the hearing and decision being reached in his case.

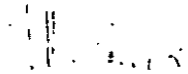
Carrier points out that it was a simple and admissible fact concurred in by claimant that he was in violation of Rule G. He was in control of and in possession of marijuana while on the Company's property in a camp car. This was a clear violation of Rule G and, in terms of Carrier's position, cannot be tolerated. Furthermore, violation of Rule G is a serious infraction fully justifying withholding claimant from service, according to Carrier. He was not denied a fair and impartial investigation as a result of being withheld from service, Carrier notes. Carrier argues that in view of the nature of the infraction, which is intolerable in a railroad service, and the fact that claimant has less than three months' service, fully justified the permanent dismissal invoked in this instance. Carrier also points out that in an effort to resolve this matter prior to the formal processing to a Board, it attempted to determine if claimant had completed a program involving the Employee Assistance Counselor of Carrier. Carrier indicated that it would reconsider permanent dismissal if, indeed, he had done so. Subsequently, Carrier received information that claimant did not follow the program outlined for him and, therefore, could not be recommended as a good risk for re-employment by the Employee Assistance Counselor.

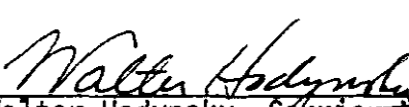
As many boards have held in the past, it is this Board's view that the possession of a drug is entirely intolerable in the railroad industry. The possession of such material, particularly on Company premises, is an index of the lack of concern of the employee not only for Carrier's rules, but for safety of himself, his co-workers and the public. The intent of Rule G on this Carrier, as in other situations,

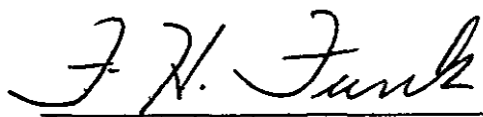
is clear and unequivocal. Carrier cannot and will not permit violations of that rule with impunity. Petitioner's argument that the penalty assessed was excessive is not persuasive in view of the nature of the infraction and also in view of claimant's short service. As this Board held in Award No. 20, the possession of such material during working hours, whether or not consumed at the time, is a clear violation of Rule G. As in the earlier case, in this instance Carrier's decision to terminate claimant was appropriate and cannot be deemed to be capricious, excessive or arbitrary. The claim must be denied.

AWARD

Claim denied.


I. M. Lieberman, Neutral-Chairman


Walter Hodynsky, Carrier Member


F. H. Funk, Employee Member

St. Paul, Minnesota

July 31, 1986