

PUBLIC LAW BOARD NO. 3558

AWARD NO. 13
Case No. 13

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
TO)
DISPUTE) SOUTHERN PACIFIC TRANSPORTATION COMPANY (EASTERN LINES)

STATEMENT OF CLAIM:

"Claim on behalf of B&B Carpenter Richard Andress, Jr. for all time lost commencing May 1, 1984, and continuing until he is reinstated with all seniority, vacation and all other rights restored, account of his harsh and unjust dismissal from service."
(MW-84-72)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee respectively within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

Claimant was dismissed from the service of the Carrier on the basis of charges which were set forth in a letter dated May 1, 1984 which read, in pertinent part, as follows:

"You are charged with being in violation of Rule G of the general rules and regulations of Southern Pacific Transportation Company for allegedly being in possession of marijuana on Company property at 5820 Wallisville Road, at approximately 7:30 PM [subsequently corrected to be 7:30 AM], Friday, March 16, 1984, as evidenced by your arrest and conviction for 'possession of marijuana' in the Harris County District Court No. 5 before Judge Neil McKay on April 18, 1984.

You are also charged with being absent without proper authority on March 16, 1984 when you failed to protect your assignment as a B&B Carpenter, which may be in violation of Rule M810, that rule reading in part:

'RULE M810: Employees must report for duty at the prescribed time and place...They must not absent themselves from their employment without proper authority...Continued failure by employees to protect their employment is sufficient cause for dismissal.'

As concerns certain procedural objections raised by Petitioner, the Board is of the opinion that in the light of Claimant's admitted guilt to possession of marijuana, as further established by Carrier introduction of certified copies of court documents at the company hearing, it was not necessary Carrier have produced at the company hearing witnesses who could state Claimant had in fact been observed by them to have had in his possession marijuana while on company property. The facts of record speak for themselves. The Board also finds no reason to hold that the company hearing should have been postponed to permit other employees to attend as witnesses. We likewise do not find meritorious the contention that Claimant had entered a plea of guilt "for the simple reason to obtain an attorney would have been more expensive than simply paying the fine and being released."

The Board also does not find reason to hold that the Claimant did in effect have permission to be absent from duty because his arrest was witnessed by his District Manager and a large number of employees.

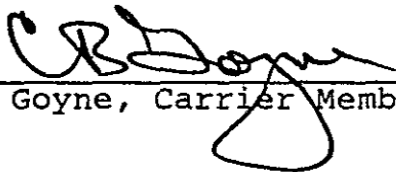
In the circumstances of record and in the light of Claimant's past disciplinary record this Board has no sound reason to disturb the penalty of dismissal as imposed by the Carrier. The claim for reinstatement will be denied.

AWARD:

Claim denied.



Robert E. Peterson, Chairman
and Neutral Member



C. B. Goyne, Carrier Member



M. A. Christie, Employee Member

San Antonio, TX
June 4, 1985