

PUBLIC LAW BOARD NO. 3845

PARTIES TO THE DISPUTE

Brotherhood of Maintenance of Way Employees)	
)	
and)	
)	Case No. 8
Norfolk and Western Railway Company (Lake Region))	Award No. 8
)	

STATEMENT OF CLAIM

"Claim of the System Committee of the Brotherhood that:

(1) The dismissal of M.E. Zeis for alleged conduct unbecoming an employe was without just and sufficient cause. [Organization File: MW-MUN-83-35].

(2) Claimant M.E. Zeis shall be reinstated to service, seniority and all other rights unimpaired and compensated for all wage loss suffered by him".

OPINION OF THE BOARD

Claimant was employed as Extra Gang Laborer with Carrier. On March 12, 1982, while in furloughed status, Claimant entered a plea before the Benton Circuit Court, County of Benton, State of Indiana, of guilty to the charge, inter alia, of possessing less than thirty grams of marijuana.

After an agreed-upon postponement, an investigation was held on August 2, 1983, to determine whether Claimant was guilty of conduct unbecoming an employee. Although notified of the investigation Claimant did not attend that hearing and the Organization's request for a further postponement was denied. Carrier dismissed Claimant from service on August 17, 1983.

Carrier's Rule 1714 is as follows:


The conduct of any employee leading to conviction of any felony, or of any misdemeanor involving the unlawful use, possession, transportation, or distribution of narcotics or dangerous drugs, or of any misdemeanor involving moral turpitude is prohibited.

There was substantial evidence adduced at the hearing that Claimant violated that Rule. While it is true that the offense which Benton County, Indiana classifies as a Class D Felony is only a misdemeanor in most other jurisdictions in the United States, Claimant's dismissal here is not based on his possession of a small amount of marijuana but on his conviction for such unlawful possession. While it is also true that marijuana is not a narcotic, it is, like alcohol, a dangerous drug. Claimant's conviction by the Benton County Circuit Court, therefore, constitutes an automatic violation of Rule 1714 which, given Carrier's consistently strict interpretation of that Rule, justifies dismissal in the instant case.

As to Claimant's non-attendance at the hearing on the matter, this Board finds no violation of due process in the absence of evidence that he was unable to attend through no fault of his own.

AWARD

Claim denied.


E.T. Herbert, Neutral Member


S.C. Lyons, Carrier Member


H.G. Harper, Employee Member

June 25/1985