

PUBLIC LAW BOARD NO. 4426

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BROTHERHOOD OF MAINTENANCE OF  
WAY EMPLOYEES

"Organization"

VS.

CENTRAL VERMONT RAILWAY, INC.  
"Carrier"

Award No. 3

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STATEMENT OF CLAIM:

Claim of the Brotherhood that:

- (a) Carrier's dismissal of Claimant K. C. Slayton was arbitrary and capricious, being based upon vague and unproven charges, at a hearing which was not held in a timely manner.
- (b) Carrier shall restore Claimant Slayton to service, with full seniority and vacation benefits, and compensate Claimant for all lost wages, including overtime, as provided for in Rule 27-A of the Scheduled Agreement.

OPINION OF THE BOARD

Claimant, K. C. Slayton, was dismissed by letter of July 19, 1985, which stated as follows:

This is to advise you that you are dismissed from the service of the Company for violation of "G" of the UCOR.

"The use of intoxicants or narcotics by employees subject to duty, or their possession or use while on duty, is prohibited."

Also for violation of Rule 3000 of the Central Vermont Railway Safety Rules, which states:

"The use of intoxicants or narcotics by employees subject to duty, or their possession, or use while on duty, is prohibited."

Also, for violation of Rule 3(a) and 3(b) of Central Vermont General Rules for Employees Not Otherwise Subject to the Rules for Conducting Transportation:

"3(a) Employees use or possession of intoxicants or narcotics while on duty or while on company property is prohibited."

"3(b) Employees shall not report for nor be on duty, at any time, under the influence of intoxicants or any other substance whatsoever (including those prescribed for them for medical reasons) that will in any way adversely affect their alertness, coordination, reaction, response or ability to work properly or safely."

By letter dated August 2, 1985, the Carrier further informed the Claimant that:

...you are also being dismissed from the service of the carrier for being insubordinate to a Company Officer, by leaving Company property without authorization, after having been directed to remain at the work site at 1640 hours by the Company Officer, on July 18, 1985, at M. P. 14.90/Palmer Subdivision, Norwich, Connecticut.

Upon being notified of his dismissal, Claimant requested a hearing, which was held on August 14, 1985. On August 22, 1985, Carrier informed Claimant by certified mail that his dismissal was confirmed. Appeal was made through various levels of the grievance procedure, and was declined at all levels. The hearing before this Board took place on February 29, 1988. Claimant was informed of the hearing before this Board, by certified mail, but he did not appear.

Events triggering the Claimant's discharge took place on July 18, 1985. On that day, the Claimant was working on a track

gang consisting of seven members. The gang was secretly observed between the hours of 0900 and 1640 by the Carrier's Chief of Police, J. B. Ovitt, and a private investigator. The Carrier engaged in this surveillance because of information received anonymously concerning alleged misconduct by the crew. As a result of activities allegedly observed by Ovitt and the investigator on July 18, and information obtained in the resulting investigation, the Carrier believed that the Claimant had broken the above quoted Rules by smoking marijuana while on duty. In addition, Carrier concluded that the Claimant was guilty of insubordination on July 18 for not having waited, as directed by Chief of Police Ovitt, for questioning.

The Carrier contends that the allegations against the Claimant are supported by substantial evidence in the record and that the claim should therefore be dismissed. The Organization maintains that the Claimant is not guilty as charged and that the Carrier committed numerous investigative and procedural errors that warrant setting aside the discipline imposed.

The Board has determined that the claim be sustained in part.

There exists some doubt concerning whether the Claimant was actually smoking marijuana while on duty on the day in question, July 18, 1985. While the Board does not doubt that those conducting the surveillance for the Carrier believed that the Claimant was in fact guilty of this alleged offense, nonetheless the possibility of error or mistake exists, as there were a

number of employees under surveillance at the same time. In addition, the Claimant's use of marijuana at work was not, as with other employees terminated for the events of July 18, 1985, unequivocally confirmed either by his admission or the statements of other employees. The Board has further concluded, however, that while some doubt concerning the Claimant's guilt exists, there is good reason to also question his claim of innocence. Statements of other employees make clear that the Claimant was a user of marijuana away from the workplace on other occasions.

After carefully considering these circumstances, along with arguments of insubordination raised by the Carrier and questions of investigative and procedural irregularities raised by the Organization, the Board has concluded that the proper outcome of this case is that the Claimant be reinstated with full seniority but without back pay. Needless to say, the Claimant is placed on notice that use of narcotics and/or alcohol at work is a most serious offense, and that any future confirmed violation of rules pertaining to such use will not be tolerated.

AWARD

Claim sustained in part. Claimant reinstated with full seniority but without back pay.

W. E. La Rue  
W. E. LA RUE,  
Organization Member

J. J. Welch  
J. J. WELCH,  
Carrier Member 4/12/88

S. E. Buehheit  
S. E. BUCHHEIT,  
Neutral Member