

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 128
Docket No. 139

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
that:

- (1) The dismissal of Assistant Foreman J.A. Sorensen for alleged violation of Rule G and Rule G (Addition) was without just and sufficient cause, on the basis of an unproven charge and capricious (Organization File 9KB-4351 D; Carrier File 81-88-21).
- (2) Assistant Foreman J.A. Sorensen shall now be allowed the remedy prescribed in Rule 19(d)."

FINDINGS:

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

On September 23, 1987, while employed as assistant foreman of an interdivisional tie gang in Palatine, Illinois, Claimant was asked to submit to drug and alcohol testing as a result of his involvement in an incident that occurred on that day. Claimant complied, and the test showed a positive result for marijuana. Claimant subsequently was directed to attend a formal investigation of the charge:

Your responsibility for violation of Rule G and Rule G (Addition) as contained in Part 1 of the General Regulations and Safety Rules (Revisions and Additions) effective January 1, 1985, while you were employed as Assistant Foreman on the Interdivisional Tie Gang at Palatine, Illinois on September 23, 1987.

The investigation was held as scheduled, and a copy of the transcript has been made a part of the record. We find that the investigation was conducted in a fair and impartial manner.

This Board has reviewed the evidence and testimony in this case,


and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of a Rule G violation on the date in question.

The record reveals that the Claimant admitted that he had used marijuana prior to the date in question while he was subject to duty. (Page 22 of the transcript.) Moreover, the record also contains evidence that the urinalysis taken of the Claimant's urine revealed the presence of marijuana. Finally, there was a collision between a suburban passenger train and maintenance of way equipment which is the type of incident giving the Carrier sufficient reason to test the employees involved. Claimant was one of the employees who was arguably responsible for the incident.

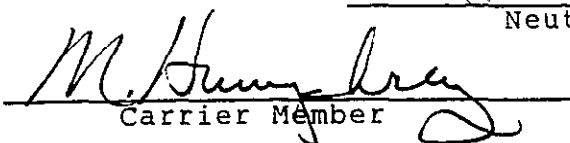
Once this Board has determined that there is sufficient evidence in the record to support the finding that the Claimant was guilty of the Rule G violation, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find it to have been unreasonable, arbitrary, or capricious. There have been hundreds of cases which have found that discharge is a proper response to a Rule G violation. This Board cannot find that the action taken by the Carrier was improper. Therefore, the claim must be denied.

Award:

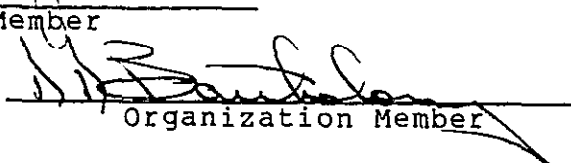
Claim denied.



Neutral Member



Carrier Member



Organization Member

Date: 2-28-89