

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 2
Docket No. 2

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 L. K. Ulery for alleged violation of Rule G and Rule G addition was without just and sufficient cause and excessive. (Organization File 40-3214; Carrier File D-11-3-3671).
- (2) Claimant L. K. Ulery shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered."

FINDINGS:

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

Claimant was employed as a trackman in Tie Gang 713, which was to begin work at Denison, Iowa, on July 26, 1982. On that date a drug search of employees reporting for duty was conducted by Denison Police Department representatives, a specially trained Police dog, and Carrier's Special Agents.

In a search of claimant's vehicle, while on Company property on the date involved, Carrier's Special Agents allegedly found marijuana and related paraphernalia. The Carrier describes the substances found as "50 to 70 marijuana seeds in the ashtray, a film cannister containing marijuana, and a flat metal box containing various paraphernalia used for the consumption of marijuana." Claimant was notified to report for investigation, to be conducted on August 4, 1982, on the charge:

"Your responsibility in connection with violation of Rule G and Rule G Addition while on duty at Denison, Iowa on July 26, 1982."

The investigation was conducted as scheduled, on August 4, 1982, 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.

Carrier's Rule G and Rule G Addition, referred to in the letter of charge, read:

RULE G:

"The use of alcoholic beverages or narcotics by employees subject to duty is prohibited. Being under the influence of alcoholic beverages or narcotics while on duty or on Company property is prohibited. The use or possession of alcoholic beverages or narcotics while on duty or on Company property is prohibited."

RULE G (ADDITION):

"Except as otherwise provided below, employees are prohibited from reporting for duty or being on duty or on company property while under the influence of, or having in their possession while on duty or on company property; (1) any drug the possession of which is prohibited by law; (2) any drug belonging to the generic categories of narcotics, depressants, stimulants, tranquilizers, hallucinogens, or anti-depressants; (3) any drug assigned a registration number by the Federal Bureau of Narcotics and Dangerous Drugs not included in category (2); or (4) any liquid containing alcohol.

"It is permissible for an employee to take and use a drug or medication coming within categories (1), (2), (3) and (4) above as medication for treatment of chronic health problems or temporary illness provided that when medication is prescribed by a licensed medical doctor the employee obtains from the doctor a written statement (which upon request, will be submitted by the employee to his supervisor) certifying that in the doctor's opinion the medication prescribed does not adversely affect the employee's ability to safely perform his duties with the company."

In the investigation substantial evidence was adduced by the Carrier in support of the charge against claimant. The car involved was on Company property. The search revealed that it did contain the marijuana seeds and related paraphernalia as described by the Carrier. The claimant was in control of the car containing the marijuana and related paraphernalia. It can properly be held, therefore, that claimant was in possession of the marijuana and related paraphernalia on Company property in violation of the rules.

As has been stated many times, the use or possession of drugs is considered a serious offense in the railroad industry, usually resulting in dismissal.

There is no proper basis for the Board to interfere with the discipline imposed by the Carrier. The Board has no authority to

consider issues concerning the application of Federal Laws or
Constitutional provisions.

A W A R D

Claim denied.

Paul C. Carter
Chairman, Neutral Member

John D Crawford
Carrier Member

H. B. Harper
Labor Member.

Date: Nov. 28, 1983