

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 3
Docket No. 3

PARTIES: Brotherhood of Maintenance of Way Employes
TO :
DISPUTE: Chicago and North Western Transportation Company

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

- (1) The dismissal of F. A. Waltha for alleged unauthorized possession of Company property and bringing discredit to the Company at Denison, Iowa, on July 26, 1982, was without just and sufficient cause and on the basis of disproven and unproven charges. (Organization File 4D-3216; Carrier File D-11-3-368).
- (2) Claimant F. A. Waltha shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered."

FINDINGS:

The Board, upon the whole record and all the evidence, finds and holds that the employes and the Carrier involved, are respectively employes 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. Claimant, upon reporting for duty, parked his vehicle on a city street and walked to the depot, which was the gang's starting point. The claimant was informed that Carrier's Special Agents and Denison Police Department representatives, with a specially trained Police dog, were investigating employes for possible drug use or possession.

A search of claimant's vehicle by Denison Police Department representatives, revealed what the Carrier describes as "processed marijuana, Hashish, several containers with Cocaine residue, and Company property consisting of four pairs of safety glasses and a caboose cushion." As his vehicle was not parked on Company property, he was not charged with possession of marijuana or controlled substances on Company property. However, he was arrested by Denison Police Department representatives and his vehicle was impounded. As an article appeared in the Denison Bulletin, a daily newspaper of general distribution in the area, stating that claimant had been charged with possession of marijuana and identifying him as a Chicago and North Western employe, he was charged on July 28, 1982:

"Your responsibility in connection with:

1. Unauthorized possession of Company property in your personal vehicle at Denison, Iowa on July 26, 1982.
2. Bringing discredit to the Company at Denison, Iowa on July 26, 1982."

The investigation was scheduled for and held on August 4, 1982, following which claimant was dismissed from service. A copy of the transcript of the investigation has been made a part of the record. A review of same shows that the investigation was conducted in a fair and impartial manner.

Rule 7 of Carrier's General Regulations and Safety Rules reads:

"Employees are prohibited from being careless of the safety of themselves or others, disloyal, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious or conducting themselves in such a manner that the railroad will be subjected to criticism and loss of good will, or not meeting their personal obligations."

There was substantial evidence introduced at the investigation to support the charges against the claimant. He contended that he had found the caboose cushion, but he did not remember telling any official of having found it, or of being in possession of four pairs of safety glasses. In the investigation he attempted to account for two pairs of the glasses, but the other two pairs were not accounted for. His statements in this respect are not persuasive.

The Carrier advises that with regard to the criminal charges against the claimant, he pleaded guilty to the possession of a controlled substance and was fined \$110.00 and costs.

Based upon the entire record, the Board does not find the Carrier's action to be arbitrary, capricious, or in bad faith. The claim will be denied.

A W A R D

Claim denied.


Chairman, Neutral Member


Carrier Member


Labor Member

DATE: Nov. 28, 1983