

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 98
Docket No. 120

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 Trackmen G. Barrett, W.C. Shulte and M.J. Kuk for alleged violation of Rule G was without just and sufficient cause and on the basis on an unproven and disproven charge.
[Organization File 8KB-4243 D; Carrier File 81-87-45, 46 & 47]
- (2) The Claimant [sic] 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 October 30, 1986, after Claimants and a fourth employee returned from lunch, their foreman detected the odor of marijuana on Claimants. Claimants and the fourth employee thereafter were removed from service and directed to attend a formal investigation of the charge:

To determine your responsibility in connection with your violation of Rule G on October 30, 1986, while working on Quentin Road crossing in Palatine, Illinois.

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.

The Organization contends that Carrier's action was based on speculation, assumption, and other innuendo; Carrier failed to introduce any evidence of a rule violation. Claimants' foreman

testified that he thought he smelled marijuana on Claimants' clothing; this could have been an error because one of the Claimants had been smoking a cigar. Moreover, the foreman testified that all of the Claimants behaved and worked normally on the afternoon in question. The Organization points out that the assistant roadmaster also observed Claimants behaving and working in a normal manner. The Organization also argues that it was an abuse of discretion for Carrier to dismiss three of the four employees involved in this matter. The Organization therefore contends that Carrier has failed to meet its burden of proof.

The Carrier asserts that the charge against Claimants was proven, and the assessed discipline was warranted. Carrier argues that the record contains substantial evidence that the odor of marijuana was present around Claimants when they returned from lunch; it therefore was reasonable for Carrier to conclude that Claimants had been smoking marijuana during lunch, a violation of Rule G. Carrier contends that Rule G violations consistently have resulted in discharge, and both this Board and the Carrier have refused to grant leniency in cases involving drug use. Carrier therefore argues that the claim should be denied in its entirety.

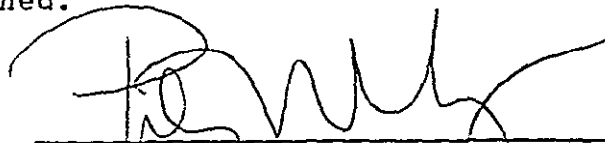
This Board has reviewed the evidence and testimony in this case, and we hereby find that there is insufficient evidence in the record to support the finding that the Claimants were guilty of Rule G violations. Hence, the claim must be sustained.

Rule G prohibits employees from reporting for duty or being on duty or on company property while under the influence of drugs or alcohol or having drugs or alcohol in their possession while on company property. There is no evidence in the record that the

Claimants had any illicit drugs or alcohol in their possession on company property. Moreover, there is insufficient evidence that the Claimants reported for duty or were on duty under the influence of alcohol or drugs. The sole evidence on which the Carrier relies is the testimony of the Claimants' foreman, who testified that he thought he smelled marijuana on the Claimants' clothing when they returned to work. However, the Claimants were allowed to work over two hours after returning to work; and they apparently all acted normally, with the exception of one who was very verbal and possibly two who had cloudy eyes. There is also testimony that one of the employees was lethargic. That testimony simply is not sufficient to support the finding of guilty on a Rule G violation. Hence, the claims must be sustained.

Award:


Claims sustained.



Neutral Member



Carrier Member



Organization Member

Date: October 22, 1987

PETER R. MEYERS

ARBITRATOR / MEDIATOR

200 SOUTH MICHIGAN AVENUE

CHICAGO, ILLINOIS 60604

TELEPHONE (312) 347-0044

September 9, 1988

Mr. B. E. Simon
Carrier Member
Chicago and North Western
Transportation Company
165 North Canal Street
Chicago, IL 60606

Mr. D. D. Bartholomay
Employee Member
Brotherhood of Maintenance of
Way Employees
175 West Jackson Boulevard
Room 925
Chicago, IL 60604

Re: Special Board of Adjustment 924: Brotherhood of Maintenance
of Way Employees and Chicago and North Western Transportation
Company; Award No. 98 - Docket No. 120

Dear Messrs. Simon and Bartholomay:

This is to acknowledge that the parties have contacted me for further interpretation of my Award No. 98 of Special Board of Adjustment No. 924. The Organization contends that because the claims were sustained in their entirety, the Claimants would be entitled to machine operators' pay during the period they were off had they been so assigned at the time of their dismissals. In other words, the Organization is seeking additional back pay for the period following the November 15, 1986, furlough of the other members of their gang since the Organization contends that the Claimants could have utilized their seniority to move into machine operator jobs and thereby remained employed and would have received additional income.

Rule 19(d) states, in part:

If the employee has been removed from position held, reinstatement will be made with all rights unimpaired and payment allowed for the assigned working hours actually lost while out of the service of the Company, at not less than the rate of pay of position formerly held, less earnings in outside employment, or for the difference in rate of pay earned, if in the service.

The above language makes it clear that the employees are only entitled to back pay that they lost as a result of being removed from the positions they formerly held. Although the Claimants may have qualified for other jobs during the furlough period, it is much too speculative for this Board to award any additional back pay for that period. The Organization bears the burden of proving that the income definitely would have been earned by the Claimants. That has not been done. Therefore, the claim for additional back pay is denied.

PETER R. MEYERS

ARBITRATOR / MEDIATOR

200 SOUTH MICHIGAN AVENUE

CHICAGO, ILLINOIS 60604

TELEPHONE (312) 347-0044

Messrs. B. E. Simon and

D. D. Bartholomay

Page Two

September 9, 1988

If you have any further questions regarding the above, do not
hesitate to contact me.

Very truly yours,

Peter R. Meyers
Neutral

PRM:btg