

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 1
Docket No. 1

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 J. I. Hiker for alleged violation of Rule G and Rule G Addition was without just and sufficient cause and on the basis of unproven charges. (Organization File 4D-3212; Carrier File D-11-3-366).
- (2) Claimant J. I. Hiker 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.

Prior to his dismissal, the claimant herein was employed as a trackman on Carrier's tie gang 713. The Carrier states that because of prior complaints received, a drug search was conducted at Denison, Iowa, on July 26, 1982, involving all production gangs working on the track in that area. The search was conducted by Denison Police Department representatives, a specially trained Police dog, and Carrier's Special Agents.

Upon claimant's arrival on the Carrier's property, the police dog indicated the presence of controlled substances in his car, and a search of the vehicle by three Carrier Special Agents resulted in the discovery of what was later found to be marijuana leaves, seeds and various paraphernalia normally used in the consumption of controlled substances, including a surgical clip commonly used as a "roach clip," a vial indicating an odor of marijuana, and two packs of cigarette papers. A field test was conducted by Carrier's Special Agents, which indicated positive results for marijuana.

Claimant was removed from the service, pending a formal investigation, and on July 26, 1982, he was charged:

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

Formal investigation was conducted 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 there was substantial credible evidence that claimant's automobile did contain controlled substances and various paraphernalia normally used in the consumption of such substances. Claimant was in complete control of the vehicle, which was parked on Company property. It can properly be held, therefore, that he was in possession of the controlled substances and paraphernalia normally used in the consumption of such substances on Company property. He was clearly in violation of Rule G and Rule G Addition. Claimant's contention that the substances found in the car were unknown to him and had probably been carried into the vehicle in his pant cuffs or boots is not persuasive.

The use of drugs, or the 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 disturb the

disciplinary action of the Carrier.

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