SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 10
Docket No. 10

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 Trackman Robert J. Shaw for alleged violation of Rule G was without just and sufficient cause and excessive. (Organization File 2D-3485; Carrier File 81-83-36-D.

(2) Claimant Robert J. Shaw shall be reinstated to service 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 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.

Prior to his dismissal, claimant was employed as a trackman at Carrier's Bell Avenue Yards in Des Moines, Iowa. On October 29, 1982, a search of claimant and of his automobile parked on company property by members of Carrier's Police Department, which search was made with claimant's consent, divulged a marijuana cigarette in the breast pocket of claimant's shirt, a marijuana cigarette in the ashtray of his automobile, along with twenty-one marijuana cigarette butts, referred to as "roaches." A field test of the cigarettes showed conclusively that they contained marijuana. The claimant was charged on October 29, 1982, with:

> "Your responsibility in connection with violation of Rule G of the General Regulations and Safety Rules, effective June 1, 1967, and Rule G Additions System Timetable No. 5, while employed as a trackman at Bell Avenue Yard, Des Moines, on October 29, 1982, at approximately 12:05 P.M."

The investigation was originally scheduled for 9:00 A.M., November 5, 1982, but was postponed and conducted on November 12, 1982. A copy of the transcript of the investigation has been made a part of the record. The investigation was conducted in a fair and impartial manner.

Rule G of General Regulations and Safety Rules, and Rule G Addition, System Time Table No. 5, referred to in the letter

of charge, read:

RULE G:

"The use of alcoholic beverages or narcotics by employes 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, employes 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 employe 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 employe obtains from the doctor a written statement (which upon request, will be submitted by the employe to his supervisor) certifying that in the doctor's opinion the medication prescribed does not adversely affect the employe's ability to safely perform his duties with the company."

In the investigation, there was substantial evidence in support of the charge. In addition to the marijuana cigarette found in claimant's shirt pocket, he was in complete control of his automobile parked on company property. It can properly be held, therefore, that he was in possession of marijuana in the automobile on company property.

Claimant was clearly in violation of the rules. The fact that he may have been relieved from duty shortly before the search of his person and the automobile was made, has no effect on his violation of the rules. He was on company property while in possession of marijuana. It has been held many times that the use

of drugs or possession of drugs is considered a serious offense in the railroad industry, usually resulting in dismissal.

A W A R D

Claim denied.

Paul C. Carter
Chairman, Neutral Member

John D Crawford
Carrier Member

H. E. Harper
Labor Member

DATE: Nov. 28, 1983