NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21825
THIRD DIVISION Docket Number SG-21925

Don Hamilton, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former New York, Chicago and St. Louis Railroad Company:

(A) The Carrier violated and continues to violate the rules of the Current Signalmen's Agreement, particularly Rule 58 (e), when after a formal investigation on March 12, 1975, in which investigation the Carrier did not sustain the charges, it dismissed Signal Maintainer N. F. McCormack from service on March 25, 1975.

(B) The Carrier now clear Mr. McCormack's personal record of charges brought against him by Regional Engineer J. A. Sattler's letter of March 5, 1975, and reinstate him to his former position (or any position his seniority entitles him to) with full pay for all time lost on such positions and all other rights and benefits provided for in Agreements between the parties and continuing until these requests are granted.

(C) Should this violation persist, continue, or prevail, this will be considered as a continuing claim as provided in Article V of the August 21, 1954 Agreement.

OPINION OF BOARD: It is agreed that the Claimant was on his regularly assigned days off when he was arrested and subsequently pled guilty to a charge of possession of marijuana.

The Company argues that this conviction is a violation of the Operations Bulletin which states in part:

> "The conduct of any employee leading to conviction of any misdemeanor involving moral turpitude (including without limitation, the unlawful use, possession, transportation or distribution of narcotics or dangerous drugs) or of any felony is prohibited."

The Claimant argues that his conviction of a misdemeanor does not involve moral turpitude and that marijuana is neither a narcotic or dangerous drug.

The Claimant further argues that this incident occurred off duty and, therefore, should not subject him to discipline.

Many awards of this Board have held that a Claimant may be disciplined for conduct occurring while he is, in fact, off duty. See Third Division Awards No. 19263, 21228, and 21334 as examples.

Society is still debating the exact classification and relative harm of marijuana. Whether it is a narcotic or dangerous drug as contemplated by the Operations Bulletin is not decisive in this case. For criminal prosecution, *State* and Federal statutes differentiate between kinds and classes of drugs and narcotics for the specific purpose of assessing varying degrees of punishment in accordance with the type of drug or narcotic involved. It was intended that the Operations Bulletin cover all categories and classes of narcotics and dangerous drugs, and this would include marijuana as the average person views that substance. In other words, the Railroad and the employes understand marijuana to be one of those items prohibited, and it is not necessary that the different classes, categories and specific scientific names of each item be spelled out in the Bulletin.

The Operations