

Public Law Board No. 2814

PARTIES
TO
DISPUTE:

Brotherhood of Locomotive Engineers
and
CSX Transportation, Inc.

STATEMENT
OF
CLAIM:

Appeal from dismissal of Engineer C. A. Senters
on February 13, 1986.

FINDINGS:

Claimant was dismissed for conduct unbecoming an employee in that he was arrested January 12, 1986 at Montgomery, West Virginia and three separate warrants were issued against him by the State of West Virginia. The warrants alleged that claimant "did sell, deliver, possess and possess with intent to deliver" Hydorphone (first warrant), Morphine (second warrant), and Cocaine (third warrant).

The arrest took place on a Sunday while claimant was on vacation. The warrants were served upon claimant after his arrest. Claimant was released after posting a \$5,000 bond.

The following day, an article appeared in the Charleston Gazette stating that claimant as well as two other identified men had been arrested the

night before and charged with selling drugs. It also contained a number of other serious allegations.

The time is long past when a man, in our country at least, can be convicted of a felony or lose his livelihood merely because he was arrested, served with warrants and commented upon adversely in a newspaper article. And that is true no matter how heinous the acts may be that are mentioned in the warrants or newspapers.

Disciplinary action will be set aside unless it is based on substantial competent proof as distinguished from mere suspicion. Charges and allegations, no matter how loudly and frequently repeated, do not in the absence of persuasive evidence establish misconduct. It is in cases of this sort, where serious misconduct is suspected and charged, that our elementary rules of fair play must prevail and be respected. All due care must be exercised to observe these principles.

We would reinstate claimant with full back pay if the evidence against him were limited to arrest, warrants and a newspaper article. However, the record also shows that claimant was subsequently, on September 25, 1986, convicted of a misdemeanor for simple possession of cocaine and that the Court

indicated satisfaction that the character of claimant and the circumstances of the case indicate that "he is not likely again to commit crime." He was placed on probation for a period of two years. A fine of \$1,000 was suspended, as was any requirement that he be imprisoned except for the two days he had spent in jail. Claimant through his attorney had entered a plea of guilty to the misdemeanor charge of simple possession of a controlled substance.

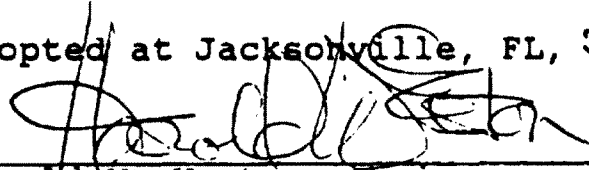
There is no evidence that claimant was guilty of trafficking in a controlled substance or any other felony or being subject to a controlled substance while on duty. Had the charges contained in the warrants been supported by proof, claimant's vacation status would not have insulated him from dismissal. It also does not protect him from less severe disciplinary action.

Upon considering the record in its entirety, it is this Board's conclusion that claimant should be reinstated without back pay.

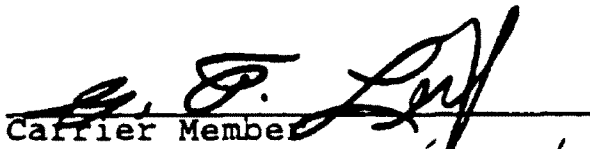
AWARD:

Claimant reinstated with seniority rights
unimpaired but without back pay. To be effective
within 30 days.

Adopted at Jacksonville, FL, January 18, 1988.



Harold M. Weston, Chairman



Carrier Member



Employee Member

