

PUBLIC LAW BOARD NO. 2824

JUL 25 11 17 AM '82  
Award No. 5  
Case No. 5  
Claim No. T-24-80

Parties United Transportation Union  
to and  
Dispute The Lake Terminal Railroad Company

Statement

of Claim: Claim for Brakeman J. Rice for reinstatement to service of the Carrier with pay, at the applicable rate, for all time lost, full seniority rights as they relate to vacations, holiday pay and pensions. Claim was also made for the wage equivalent of all other fringe benefits. Time claim will be date of discharge April 3, 1980 until returned to service of the Carrier. The record of the transcript of the investigation does not support the charge of discipline assessed.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 8, 1980, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, who had been reinstated to service by Award No. 6 of PLB 2312 (Van Wart) on November 6, 1979, apparently, was observed and subsequently arrested as a result of a true bill indictment issued by a Grand Jury on November 28, 1979 on the charge of aggravated trafficking in drugs.

An article to this effect appeared in the Elyria Chronicle - Telegram on December 9, 1979. Such article did not, however, associate Claimant with the railroad.

Claimant and his attorney, appeared in the Lorain County Court of Common Pleas on February 29, 1980 at which time Claimant changed his previous plea of not guilty to that of "no contest," to a charge of violation of the Ohio Revised Code Section 2925.03 (A-1), trafficking

in drugs (PCP) (sale less than minimum) and also to a "no contest" to the charge of violating Ohio Revised Code Section 2925.03 (A-L) aggravated trafficking in drugs (LSD) (sale less than minimum) and a third count was "not processed" (i.e., nolle prosequi, a formal entry on the record by the prosecuting officer that he will no further prosecute the count involved).

Thereafter, Claimant was found guilty of the two charges to which he pleaded "no contest." He was then referred to the Probation Department and continued on bond. The foregoing was taken from the journal entry in Case No. 22835 in the Court of Common Pleas, Lorain County, Ohio.

Consequently, as a result of Claimant having been found guilty on the two counts, involving trafficking and aggravated trafficking in drugs, both of which drugs are hallucinogenic drugs, he was given a notice, under date of March 5, 1980, to appear for a formal investigation, reading:

"You are hereby charged with being dishonest and/or with not being of good moral character and having conducted yourself in a manner which may subject the railroad to criticism and loss of good will in violation of General Rule B (1) and (2) of the Lake Terminal Railroad Company's Book of Operating and Safety Rules in that, on February 29, 1980, you were found guilty in Lorain County Court to the charge of trafficking in drugs and aggravated trafficking in drugs."

The investigation, scheduled for March 7, 1980, was postponed. It was rescheduled and held on March 28, 1980. As a result thereof, Carrier concluded Claimant to have been culpable of the offenses with which charged. He was dismissed from service as discipline therefor.

The Employees contended, first, that Claimant, at the time of his arrest for the drugs charge, had been dismissed from Carrier for a prior malingering charge and was, therefore, not an employee of the Carrier subject to its control. Second, they argued that the Company's name was not mentioned in the news account therefore he could not have brought discredit to the Company. Thirdly, they asserted, that another

employee of the Company who was a known felon was not disciplined therefor. Fourth, Claimant's crime was not serious as he was merely placed on probation by the Court. Fifth, it was contended that Claimant sought professional corrective help for his illness.

It is true that Claimant was arrested during a period in which he was not an active employee. However, it is also true that Claimant held an employment relationship by reason of the fact that his disciplinary case was on appeal. Thus, the decision of dismissal was not final and binding until a final and binding decision on his case had been rendered by Public Law Board No. 2312.

Despite the Employee's vigorous and eloquent arguments thereon, the Board finds them to not be persuasive enough to agree therewith. If Claimant were not an employee, and the Board does not agree, because of the contractual employment relationship held, the knowledge that Claimant was involved in drug trafficking during the period of his disciplinary appeal and at the time of his restoration to service, provided Carrier with sufficient sound grounds on which to take appropriate action against an employee, who obviously had been in violation of the Operating Rule with which charged, reading:

"Rule B. (1) To enter or remain in the service, employees must be of good moral character and must conduct themselves at all times, whether on or off company property, in such manner as not to bring discredit upon the company.

The conduct of any employee leading to conviction of any misdemeanor involving moral turpitude, the unlawful use, possession, transportation, distribution or selling of narcotics or dangerous drugs, or of any felony, is prohibited.

(2) Employees will not be retained in the service who are careless of the safety of themselves or others, indifferent to duty, insubordinate, dishonest, immoral, quarrelsome, or otherwise vicious, or who conduct themselves in a manner which may subject the railroad to criticism and loss of goodwill."

Further, Award No. 6 of PLB No. 2312 maintained Claimant's continuity of employer/employee relationship by restoring Claimant to service with all rights unimpaired. Therefore, Claimant had been retroactively reinstated. Thus, during the interim period he was thereby subject to Carrier's rules.

Claimant's conduct, i.e., drug trafficking, obviously not only represented a hazard to his fellow employees were he permitted to remain in service, but it also would have jeopardized the safety of Carrier's operations and also could have resulted in the railroad being subjected to criticism and loss of goodwill.

The civil charges against Claimant of trafficking of drugs leads to a reasonable presumption of the possibility of his use of such drugs. Such, of course, is not only violative of Carrier's Operating Rules, which are designed for the safety of its operations and of its employees, but it is conduct which has a serious deleterious impact on Claimant's fellow employees. All railroad employees are required to be alert, to have their wits about them at all times, and in the course of their work, they must have the confidence and faith that their fellow employees are also carrying out their part of their mutual responsibility necessary to accomplish safe transportation movements.

The Board finds the fact that the Company's name was not mentioned in the news account was not a valid basis to conclude therefrom that the potential for embarrassment to the good name of the company was not always present. Notwithstanding, Claimant was charged on three bases.

The fact that another employee was a known felon and had not been disciplined has no bearing on Claimant's innocence or guilt. The Board is not privy to the facts of such allegation. It is long recognized that the dereliction of duty by one employee does not serve to excuse the failure of another employee to properly perform his duties.

Claimant's crime was serious. That the court, for reasons of its own, placed him on probation does not lessen the seriousness of Claimant's crime.

That Claimant sought professional help on February 6, 1980 by entering a program at the Midway Health Center Inc. may be viewed in

two different lights. First, affirmatively that Claimant was seeking help and he therefore took a step forward by entering a program. The second is that Claimant was due in court a few weeks thereafter and that such action may well have been a self-serving gesture. In either or any event such fact, of course, has no bearing on the instant case. The argument, at best, represents an euphemistic plea for leniency which directs itself solely to the Carrier.

The Board finds that Claimant was properly charged, that the notice of investigation was timely sent is consistent with Article 42 because the action was taken when Carrier had knowledge that Claimant had been found guilty in court, which fact is more consistent with the principle of American jurisprudence that one is innocent until proven guilty. Carrier, here, timely acted upon the proof of guilt rather than upon the fact of arrest. Claimant was capably represented and was accorded the right of witnesses and the other rights accorded him under his discipline rule and exercised his right of appeal.

There was sufficient evidence adduced to support the Carrier's conclusion as to Claimant's culpability.

The discipline assessed in the circumstances is not unreasonable. This claim will be denied.

Award: Claim denied.

*L. J. Wotaszak*  
 L. J. Wotaszak, Employee Member

*R. B. McGinley*  
 R. B. McGinley, Carrier Member

*Arthur T. Van Wart*  
 Arthur T. Van Wart, Chairman  
 and Neutral Member

Issued at Falmouth, Massachusetts, June 30, 1982.