

PUBLIC LAW BOARD NUMBER 3530

Award Number: 42
Case Number: 42

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Painter-Helper, W. E. Johnson, 6709 Pierce St., Norfolk, VA 25313, was dismissed from service on June 18, 1984 for violation of N & W Safety Rule 1714. Claim was handled on the property in accordance with Railway Labor Act and agreement provisions. Employees request reinstatement with pay for all lost time and all rights unimpaired.

FINDINGS:

Claimant was employed by Carrier as a Painter-Helper in Carrier's B and B department at Norfolk, Virginia. By letter dated May 9, 1984, Claimant was notified to attend a hearing regarding charges that he violated Safety Rule 1714, in connection with being involved in and convicted of a felony offense. Formal investigation was held on June 1, 1984. By letter dated June 18, 1984, Claimant was notified of his

dismissal from Carrier's employ as a result of his guilt concerning the aforementioned charges.

The issue to be decided in this dispute is whether Claimant was dismissed for just cause under the Agreement.

The Organization argues that Rule 1714, stating, "The conduct of any employee leading to conviction of any felony or any misdemeanor involving the illegal use, possession, transportation of drugs, or of any misdemeanor involving moral turpitude is prohibited." The Organization contends that Rule 1714 should not be applied for several reasons. First, the Organization alleges that the key purpose of Rule 1714 is to deter and punish drug abuse, which did not involve the offense Claimant was charged with. The Organization further contends that Claimant's crime was more like a misdemeanor offense, lacking the serious consequences of, for instance, a drug offense. The Organization therefore maintains that Rule 1714 cannot be used to justify Claimant's dismissal.

The Organization further contends that it was improper for Carrier to dismiss Claimant merely because of a guilty plea entered by Claimant in court. The Organization cites awards allegedly holding that a guilty plea without more, particularly concerning an offense not having taken place on Carrier's property, constitutes insufficient grounds for dismissal. The

Organization argues that Carrier cannot legitimately dismiss Claimant for violation of a "safety" rule, since Claimant was not even on Carrier's property at the time of the alleged "safety" violation. The Organization therefore concludes that the grounds for Claimant's dismissal were flawed and that, accordingly, he should be reinstated with pay for all time lost.

The position of the Carrier is that Claimant's dismissal under the circumstances was completely justified, and not arbitrary or excessive in any fashion.

Carrier maintains that Safety Rule 1714 clearly entitles it to dismiss employees who have pleaded guilty to felonies, particularly felonies such as Claimant's -- (Burglary and Grand Larceny).

Carrier cites several awards holding that dishonest conduct by an employee constitutes grounds for dismissal. Carrier maintains that those awards establish that even lesser instances of dishonesty constitute sufficient grounds for dismissal. Carrier additionally notes that Claimant has previously been found guilty of another crime, thereby reinforcing its decision toward dismissal. Carrier concludes

that under the circumstances of this case, its decision to dismiss Claimant must be upheld.

After review of the record, this Board finds that the claim must be denied.

We do not find that Carrier has abused or capriciously used its discretion in dismissing Claimant. It is a well established principle that dishonest conduct on the part of an employee constitutes just cause for dismissal. We do not agree with the Organization's contention that "off-duty" dishonesty cannot be grounds for dismissal. While "on-duty" dishonesty (i.e. theft of Carrier property) may be more serious for purposes of discipline, an "off-duty" act of dishonesty may equally serve as grounds for dismissal. "Off-duty" dishonesty reflects on the employee's overall character, and Carrier has a legitimate concern that such "off-duty" dishonesty may extend over to that employee's relationship with Carrier. The offense to which Claimant pleaded guilty involved a serious act of dishonesty, one with significant public penalty. In light of

that offense, we cannot find that Carrier went beyond its discretion in determining that dismissal was appropriate. Accordingly, the Organization's claim must be denied.

AWARD:

Claim denied.

Nicholas Rymas
Neutral Member

J. A. Abbatto Jr.
Carrier Member

Bryce L. Lull
Organization Member

Date: 1-21-87