

PUBLIC LAW BOARD NUMBER 3530

Award Number: 57

Case Number: 57

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

Machine Operator, W. A. Steele, Box 13, Maben, WV 25870, was dismissed from service on September 28, 1984, for alleged violation of conduct unbecoming an employee. Claim was handled on the property in accordance with Railway Labor Act and agreement provisions. Employees request reinstatement with back pay for all lost time with vacation and seniority rights unimpaired.

FINDINGS

Claimant was employed with Carrier as a Machine Operator. By letter dated August 28, 1984, Claimant was notified to attend an investigation concerning charges that he acted in a manner unbecoming an employee on August 9, 1984. An investigation was held on September 13, 1984. By letter dated September 28, 1984, Claimant was dismissed from service.

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

The position of the Organization is that Carrier failed to justify Claimant's dismissal on the basis of the grounds stated.

Initially, the Organization asserts that Carrier violated the Agreement by failing to afford Claimant an investigation within 30 days of its initial knowledge of the offense. The Organization contends that Carrier became aware of Claimant's arrest for possession of marijuana on March 29, 1984 through a March 26, 1984 newspaper article. The Organization argues that Carrier's failure to proffer charges and afford Claimant an investigation until September 1984 clearly violated Claimant's rights under the Agreement.

The Organization further argues that there is no substantive basis to the charges brought by Carrier, contending that no adverse effect was sustained by Carrier as the result of Claimant's arrest, and that Carrier's retention of Claimant in its employ during that period supports the Organization's position. The Organization argues that if Carrier was not adversely affected prior to Claimant's dismissal, there is no basis on which to assume that Carrier was harmed by Claimant's subsequent arrest/prosecution.

Finally, the Organization argues that dismissal was unwarranted in light of the overall circumstances. The Organization cites Claimant's otherwise exemplary disciplinary record and the fact that he has paid for his criminal activity; and maintains that Claimant's dismissal was harsh and excessive under the circumstances.

The position of the Carrier is that Claimant was properly dismissed for his responsibility concerning the possession of illegal drugs.

Initially, Carrier contends that there is no dispute of fact concerning Claimant's guilt. Carrier documents that Claimant was arrested for the possession of marijuana, subsequently pled guilty and was convicted. Carrier argues that Claimant's admitted guilt to the offense in effect substantiates its charges, since the offense clearly constitutes conduct unbecoming an employee. Carrier further argues that it is a long standing principle that it is under no obligation to retain an employee found guilty of a drug related crime.

Carrier maintains that the discipline imposed was warranted under the circumstances. Carrier contends that the Organization's allegation concerning no adverse consequences to it lacks both factual basis and relevancy, since Claimant's conduct clearly violated the relevant rules and regulations cited, and therefore justified his dismissal.

Finally, Carrier argues that the Organization's procedural objection lacks merit. Carrier maintains that it allowed Claimant to continue working pending disposition in court of his criminal action for Claimant's benefit; and that its decision not to charge Claimant until disposition of the criminal charges was

within its discretion. Carrier maintains additionally that Claimant's admitted guilt nullifies any possible prejudice caused as a result of the delay.

After review of the record, the Board finds that the Organization's claim must be denied.

It is not the purpose of this Board to rehear an investigation that Carrier held but only to determine if the discipline imposed was arbitrary, capricious or an abuse of discretion.

In the present case, we find that Carrier has sustained the charges against Claimant. There is no factual dispute that Claimant was charged with and convicted of possession of marijuana. In light of Claimant's guilty plea, we find substantial evidence that Claimant acted in a manner unbecoming an employee and was properly dismissed under the circumstances. Carrier is within its discretion in dismissing an employee who either uses or in some other way is associated with illegal controlled substances. The fact that Carrier may not have been directly adversely affected by Claimant's actions does not affect its justification for dismissing Claimant, namely the fact that he had been convicted for possession of illegal drugs. Finally, we find the Organization's procedural argument unpersuasive. Carrier properly waited for Claimant's criminal trial to end before instituting charges. We find no prejudice as a result of

Carrier's actions. To the contrary, we find that Claimant was given every benefit of the doubt regarding the charges pending against him. Under the circumstances, we find that Claimant was afforded a fair investigation, and that his dismissal was for just cause.

AWARD

Claim denied.

Nicholas Kumar
Neutral Member
J. C. Lyons
Carrier Member
Bruce J. Hall
Organization Member

DATE: 1-29-88