

Public Law Board No. 3794

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
CSX Transportation, Inc.

STATEMENT
OF
CLAIM:

The dismissal of Section Foreman M. W. Kinsey was without just cause and he shall be reinstated with seniority and other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

Claimant was dismissed from Carrier's service on May 10, 1985. He had last performed compensable service in May 1984 and was on inactive status from that time until his dismissal.

On January 16, 1985 claimant was arrested by the Jacksonville City Police Department and charged with possession of a controlled substance, to wit, cocaine. He appeared before Circuit Court Judge Olliff on Friday, March 29, 1985 and entered a plea of Nolo Contendere. Adjudication was withheld and claimant was ordered to pay \$500 in court costs. On May 3, 1985, upon claimant's petition, the Circuit Court, Fourth Judicial Circuit, in and for Duval County, Florida, entered an Order sealing the records of criminal history pertaining to claimant's arrest on January 16, 1985, the charge against him and the disposition thereof.

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This Board is not in a sound position to substitute its judgment for that of Carrier in this case. Claimant did not, as a matter of substance, contest the allegation that he was in possession of cocaine on January 16, 1985. It was not unreasonable in the circumstances for Carrier to question claimant's dependability and judgment and to decide that it did not wish to entrust railroad responsibilities to him, even though he had a record of fifteen years good service in that industry. The fact that he was not on duty at the time of the incident is not relevant when his conduct exhibited a lack of qualities reasonably requested by Carrier for employment.

We find no merit in Petitioner's contention that the claim must nevertheless be sustained since Carrier failed to prefer charges against claimant until April 9, 1985 and was aware of claimant's arrest on January 18, 1985. Petitioner emphasizes that Rule 39 Section 7 prescribes that charges must be preferred "within ten days of the date violation becomes known to Management."

Petitioner's time limit point lacks merit. The Court proceedings were not held until March 29, 1985, a Friday, and there is no showing that any responsible official of Carrier was aware of the entire situation until the following Monday, April 1.

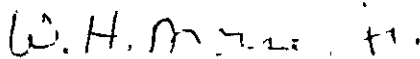
AWARD:

Claim denied.



Adopted at Jacksonville, Florida, March 17, 1987.


Harold M. Weston, Chairman


Carrier Member


Employee Member