

CATCHER, J. M. 10/11

FEB 23 6 57 AM '91

1300000000000000

FRATERNAL ORDER OF POLICE

"FOP"

VS.

CONSOLIDATED RAIL CORPORATION

"CARRIER"

CASE NO. 5

AWARD NO. 2

(W. G. Vest)

STATEMENT OF CLAIM

Appeal of dismissal assessed W. G. Vest as outlined on Form G-32 Notice of Discipline dated April 10, 1989 in connection with the following:

1. Violation of Conrail Police Policy and Procedure, Page 2-1, Section 3.0 which states "members shall obey all laws of the United States and Canada, and any state, province, and local jurisdiction in which the member is present. A conviction as a result of the violation of any law shall be prima facie evidence of a violation of this rule" in that on January 11, 1989, at approximately 0252 hours, you were arrested by the Ohio State Highway Patrol and charged with Driving While Intoxicated, a violation of Ohio State Motor Vehicle Code Section 4511.19a to which you pled guilty on January 30, 1989.
2. Violation of Conrail Police Policy and Procedure, Page 2.2, Section 6.0 which states "members shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the Department. Violation of this rule shall include, but is not limited to, conduct which brings the Department into disrepute; reflects discredit upon the individual as a member of the Department; or impairs the operation or efficiency of the Department" in that after being arrested by Ohio State Patrol Officers for Driving While Intoxicated, you made verbal threats against the arresting officers, as well as, their

families after which you were subsequently identified as being employed by the Consolidated Rail Corporation as a Police Officer."

OPINION OF THE BOARD

Claimant was employed by Carrier as a Police Officer for approximately 14 years and was headquartered in Columbus, Ohio. On the evening of January 10, 1989, Claimant and police officers from the City of Columbus apprehended perpetrators after a stakeout and pursuit, during which Claimant believed he was nearly run over by a vehicle driven by the perpetrators. Upon the end of his working shift at 11:00 p.m. that evening, Claimant met with the officers from the City of Columbus for a drink. Thereafter, during the early morning of January 11, Claimant was stopped by the Ohio State Highway Patrol for a speeding violation. Claimant was arrested and charged with driving while intoxicated, a violation of the Ohio State Motor Vehicle Code. When asked by the arresting officers where he worked and what he did, Claimant identified himself as a police officer with Carrier. Claimant was also allegedly verbally abusive and threatening to the arresting officers. Claimant subsequently pled guilty to the charge of driving while intoxicated. He was given a seven day jail sentence, which was suspended on the condition that he enter an Alcoholics Anonymous program and attend rehabilitation and counseling sessions. Claimant's driver's license was also suspended for 60 days in connection with the incident, but he was granted limited driving rights to,

from and during work as a Carrier police officer, and to and from his counseling sessions. On March 15, 1989, Claimant informed Carrier of his arrest and conviction, and his license suspension. Carrier thereafter removed Claimant from service pending an investigation. A formal investigation was held on March 30, 1989. Claimant was present and represented by the Organization. The officers from the Ohio State Patrol who arrested Claimant were not present. Claimant did, however, acknowledge that he pled guilty to driving while intoxicated. Thereafter, Carrier dismissed Claimant in all capacities by form dated April 10, 1989. When Carrier would not reinstate the Claimant, the Organization placed the claim before this Board.

The Carrier notes that it is undisputed that Claimant violated a law by driving while intoxicated, and this violated the Rules for Government and Conduct for Members of the Conrail Police Department. Moreover, As Claimant admittedly identified himself to the arresting officers as a Carrier police officer, his threatening conduct towards those officers violated Section 6.0 of the Rules of Conduct. Given these offenses, Carrier maintains that the discipline assessed was appropriate and cannot now properly be set aside by the Board. Finally, Carrier maintains that defenses put forth by the Organization in the Claimant's behalf are without merit. In this regard, Carrier questions whether Claimant's notification to Carrier of his conviction was truly "voluntary", as the Claimant's offense could have been discovered by Carrier during a routine license check.

In addition, Carrier maintains that Claimant's attempts to make amends after the incident do not change the gravity of the offense. Finally, Carrier argues that it was impossible to have the arresting officers present at Claimant's investigative hearing, and the police report and court documents provide sufficient evidence of his guilt. In light of this evidence, as well as Claimant's past record, Carrier contends that the claim must be denied.

The Organization argues that Carrier provided no evidence on the property that Claimant's off-duty conduct had any relationship to his position as a police officer with Carrier, or that Carrier's good will was damaged or impaired in any way by Claimant's conduct. In addition, the Organization argues that Carrier based its entire case on hearsay and indirect information. The Organization also asserts that Carrier has here displayed a particular insensitivity to Claimant, as alcoholism is a disease, Claimant voluntarily disclosed his arrest to Carrier, and that in other incidents Carrier has used a constructive approach to treatment of individuals afflicted by alcoholism or substance abuse.

The Board has determined that the claim must be sustained in part, and the Claimant returned to the seniority roster with full seniority. In addition, Claimant should receive six months back pay and benefits lost as a result of his termination.

The Board concludes that Claimant committed a serious offense when he violated Ohio State law by driving while

intoxicated. Moreover, the evidence is clear that Claimant was abusive to the arresting officers. Nonetheless, the Organization has skillfully noted that another employee in the same district as Claimant had twice been arrested for driving while intoxicated yet on each occasion received 30 day suspensions rather than the penalty of discharge. This information was contained in a written statement made by Claimant which was placed into the record on the property. Carrier could not deny this contention. Thus, the question of disparate treatment raised by the Organization is a real one. The Claimant was once convicted of driving while intoxicated and he acted abusively to the arresting officers. The other officer allegedly has twice been convicted of driving while intoxicated, once in his Conrail officer's uniform. While the situations are not identical, the Board is convinced that the totality of Claimant's offenses is not so different from the totality of the other officer's offenses so as to justify the penalty of discharge when the other officer only received 30 day suspensions. Accordingly, the appropriate outcome of this case is that the Claimant be reinstated under the conditions set forth above.

AWARD

Claim sustained in part consistent with the above Opinion.



J. H. BURTON
CARRIER MEMBER



E. R. FLAKE
ORGANIZATION MEMBER



S. E. BUCHHEIT
NEUTRAL MEMBER