

BEFORE PUBLIC LAW BOARD NO. 5896

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 178

STATEMENT OF CLAIM:

Appeal of dismissal of Claimant L.R. Butler for conduct unbecoming an employee, as a result of investigation conducted on December 4, 2000.

FINDINGS:

Claimant L.R. Butler was employed by the Carrier as a Bridge Operator/Tender during the time period relevant to this matter.

On November 16, 2000, the Claimant was notified to report for a formal investigation and hearing into charges that he had engaged in conduct unbecoming an employee in connection with his September 28, 2000, arrest on drug-related felony and misdemeanor charges. The investigation was conducted on December 4, 2000. As a result, the Claimant was notified on December 20, 2000, that he was being dismissed from the Carrier's service.

The Organization filed a claim on the Claimant's behalf, asserting that the Claimant's dismissal from service was harsh and excessive, and that the Claimant did not receive a fair and impartial hearing. The Carrier denied the claim.

The Carrier contends that the evidence proves that the Claimant was guilty as charged, and that the Claimant was afforded all procedural rights. The Carrier maintains that the instant claim therefore should be denied in its entirety.

The Carrier emphasizes that on September 27, 2000, the Carroll County Sheriff's Office

conducted a search of the Claimant's home, pursuant to a search warrant that was issued in connection with the suspected manufacture of methamphetamine. As a result of this search, a methamphetamine laboratory was found in the Claimant's home, as well as chemicals associated with such a laboratory, and ledgers, proceeds, and records of the Claimant's drug-manufacturing business. The Claimant was arrested on September 28, 2000, on drug-related felony and misdemeanor charges.

The Carrier contends that during its investigation of this matter, the Claimant stated that he was at work on the day that his home was searched, but the Carrier's payroll records indicate that he was taking a personal day, which requires forty-eight hours' notice. Also, on the day of his arrest, the Claimant was taking a vacation day. The Carrier maintains that because the Claimant requested time off, in advance, for the days of the search and his arrest, it appears that the Claimant was well aware that something was happening.

The Carrier then asserts that throughout its investigation, the Claimant said he did not have any knowledge of the drug-manufacturing equipment in his home, that this equipment could have been planted, or that it could have belonged to his daughter or to his girlfriend. The Carrier points out that the Claimant pleaded guilty to a lesser charge. Moreover, at no time during the investigation did the Claimant state that he was innocent of the drug charges, but only that he could not afford to go to the Grand Jury.

The Carrier ultimately contends that the Claimant was afforded all procedural rights, and he was proven guilty of the charges. The instant claim therefore should be denied in its entirety.

The Organization contends that the transcript of the December 4, 2000, hearing illustrates the hearing officer's bias against the Claimant, and it also demonstrates that the Claimant was

pre-judged by the Carrier.

The Organization acknowledges that the Claimant did plead guilty to a misdemeanor, but it asserts that this will not interfere with the Claimant's ability to perform his job for the Carrier. The Organization argues that there have been a number of cases in which Carrier employees have pled guilty to misdemeanors, but have not even been charged by the Carrier, much less dismissed from service.

The Organization asserts that despite his twenty-six years of unblemished service, the Claimant is being treated differently than other employees. The Organization argues that there is no question that the Claimant's dismissal from service is harsh and excessive punishment.

The Organization ultimately contends that the claim should be allowed, and the Claimant restored to service with compensation for all time lost, and all reference to this matter removed from his personal record.

The parties being unable to resolve the issues, this matter comes before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. The record reveals that the Claimant was afforded a fair and impartial hearing and that all of his due process rights were protected.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record that the Claimant is guilty of conduct unbecoming a Carrier employee and violation of Carrier Operating Rule 501. The record makes it clear that the Claimant pled guilty to a lesser charge after he had been charged with being in possession of items associated with the manufacture of methamphetamine. He pleaded guilty to the misdemeanor. There is no question that that wrongdoing on the part of the Claimant constituted

conduct unbecoming a Carrier employee and was a violation of Carrier Operating Rule 501-A.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

This Board is well aware of the Claimant's over twenty years of service for the Carrier. However, given the seriousness of the offense in this case, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated his employment. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

Dated: 8/15/02