

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6644

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NORFOLK SOUTHERN RAILWAY COMPANY

)
) Case No. 2
)
) Award No. 2
)

Martin H. Malin, Chairman & Neutral Member
R. C. Robinson, Employee Member
D. L. Kerby, Carrier Member

Hearing Date: July 25, 2003

STATEMENT OF CLAIM:

1. The discipline (withheld from service on December 10, 2001 and subsequent dismissal on January 21, 2002) imposed upon Mr. J. A. Crowley in connection with charges of alleged conduct unbecoming an employee and violation of Carrier's policy on drugs and alcohol in connection with a March 19, 2001 guilty plea in Bryan Ohio Municipal Court to possession of marijuana and paraphernalia on February 3, 2001 and alleged falsification of payroll documentation on February 3, 2001 was arbitrary, capricious, unwarranted, excessive and in violation of the Agreement (Carrier's File MW-DEAR-01-74-LM-481 NWR).
2. As a consequence of the violation referred to in Part (1) above, the decision of dismissal shall be overturned and Mr. J.A. Crowley shall be reinstated to service and compensated for all time lost wages, credits and benefits normally due.

FINDINGS:

Public Law Board No. 6644, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

There is no question that Carrier proved Claimant's guilt of conduct unbecoming an employee and of violating Rule G by substantial evidence. On February 3, 2001, while driving home after work, Claimant was stopped for speeding on the Ohio Turnpike. Claimant was found with marijuana and drug paraphernalia in his possession. Claimant pled guilty to misdemeanor

charges of possession. Said conviction constituted conduct unbecoming an employee. Moreover, Claimant admitted having the marijuana and drug paraphernalia in his car while on duty and while he was using his car on duty. Thus, Claimant admitted to the essential elements of a Rule G violation.

The charge of falsifying payroll documentation stemmed from the fact that Claimant submitted for 13 ½ hours of work on February 3, 2001, and he was stopped by the police at 5:32 p.m. Claimant admitted that he began work that day at 6:30 a.m. and left around 4:00 p.m. However, Claimant testified that he served as the timekeeper and that numerous employees would call him after hours and he would receive and process their time. According to Claimant, his supervisor told him to accumulate this extra time and add it to his time worked at the end of the week on Saturday. Moreover, Claimant's supervisor, who was on active military duty at the time of the investigation, submitted a written statement corroborating Claimant in this regard. Accordingly, we find that Carrier failed to prove Claimant's dishonest intent by substantial evidence.

We turn now to the penalty of dismissal in light of Claimant's criminal conviction and his violation of Rule G. Carrier's policy of dismissal of employees with such criminal convictions is long-standing and has been upheld in numerous prior awards. Indeed, such transgressions as Claimant committed are extremely serious and will rarely result in a finding that the penalty of dismissal is excessive.

The instant case, however, presents a set of extraordinary circumstances. Claimant had 28 years of service at the time of his dismissal. The conviction was for a misdemeanor, not a felony. Moreover, Claimant went into rehabilitation and there is no dispute that this was his first Rule G offense. Under all of these circumstances, and without setting a precedent for future cases, we find that the penalty of dismissal was excessive and that Claimant should be given one last chance to demonstrate that he can be a productive, law abiding and sober employee. Claimant shall be reinstated to service without compensation for time held out of service. Claimant's reinstatement shall be conditioned on his compliance with all conditions, restrictions and other terms of Carrier's DARS program.

AWARD

Claim sustained in accordance with the Findings.

ORDER

The Board, having determined that an award favorable to Claimant be made, hereby

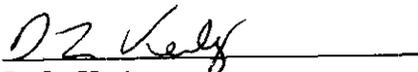
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orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto



Martin H. Malin, Chairman



D. L. Kerby
Carrier Member



R. C. Robinson
Employee Member

Dated at Chicago, Illinois, December 17, 2003.