

BEFORE PUBLIC LAW BOARD NO. 6915

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CN/WISCONSIN CENTRAL RAILROAD**

Case No. 6

STATEMENT OF CLAIM:

Appeal of the dismissal of Claimant M. Mathias, and for Claimant's reinstatement to service with seniority and all other rights unimpaired and compensation for all time lost, because the Carrier improperly terminated the Claimant's seniority.

FINDINGS:

At the time of the events giving rise to this dispute, the Claimant was employed by the Carrier as a Roadway Mechanic.

By notice dated February 18, 2005, the Claimant was directed to appear for a formal hearing and investigation on charges that the Claimant had violated Carrier rules and had engaged in conduct unbecoming a Carrier employee when Claimant allegedly was absent without authority on February 9 and 10, 2005; was in possession of an illegal substance while on Carrier property on February 9, 2005; and that the Claimant was arrested on February 9, 2005, while on Carrier property. After a postponement, the investigation was conducted on March 9, 2005. By notice dated March 22, 2005, the Claimant was informed that as a result of the hearing, he had been found guilty as charged, and he was being dismissed from the Carrier's service. The Organization subsequently filed a claim on the Claimant's behalf, challenging the Carrier's decision to discharge him. The Carrier denied the claim.

The Carrier initially contends that the evidence documents that the Claimant pled guilty to "maintaining drug-involved premises," that the Claimant was aware that narcotics (cocaine and marijuana) were being sold out of his RV, and that the Claimant admitted to using cocaine with the drug dealer. The Carrier points out that the record further demonstrates that at the time the Claimant was arrested on Carrier property in front of several employees, the police found marijuana in the Claimant's possession. The Carrier maintains that there is ample evidence in the record to support its findings that the Claimant committed the violations with which he was charged.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that although the Carrier indicated that the Claimant was guilty of violating several Carrier rules, the Carrier has failed to describe how those rules allegedly were violated. The Organization maintains that none of the testimony in the record supports the Carrier's position. The Organization therefore asserts that the Carrier has failed to meet its burden of proving the charges leveled against the Claimant.

The Organization then argues that the Carrier violated Rule 31A because the Carrier Officer who decided to dismiss the Claimant was not present at the investigation to view the demeanor of the witnesses. The Organization points out that there was a conflict in the interpretation of the testimony presented.

The Organization goes on to assert that even if the Carrier was able to establish

that the Claimant was arrested on Carrier property and that he was absent without authority, the fact that someone was arrested does not mean that the person is guilty of anything. The Organization therefore maintains that the decision to dismiss the Claimant was arbitrary and capricious.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the procedural arguments raised by the Organization and we find them to be without merit.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of conduct unbecoming a Carrier employee because he was found in possession of an illegal substance and arrested on February 9, 2005, while on Carrier property. The Claimant was handcuffed and taken into custody while on duty.

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.

The Claimant in this case was found guilty of a very serious offense. This Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it

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terminated the Claimant's employment. Therefore, the claim will be denied.

AWARD:

The claim is denied



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 8-22-06



CARRIER MEMBER

DATED: 8-22-06