

PUBLIC LAW BOARD NO. 1760

Award No. 109

Docket No. 109

N&W File MW-STL-85-11

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company
 (Former Wabash)

Statement

of Claim: Claim on behalf of N. E. Carson requesting reinstatement and pay for time lost as a result of his dismissal following a February 28, 1989, investigation in which he was charged with conduct unbecoming an employee in connection with his guilty plea to the felony charge of unlawful possession of a controlled substance, mainly cocaine.

Findings: The Board has jurisdiction of this case by reason of the parties Agreement establishing this Board therefor.

The Claimant, a B&B Foreman, on the St. Louis District, was apprehended while carrying drugs in Rusk County, Texas, a felony to which he pled guilty. Claimant was removed from service pending a hearing. He was cited to appear at a formal investigation on the charge:

"conduct unbecoming an employee in that on January 6, 1989 you pled guilty to the charge of unlawful possession of a controlled substance, namely cocaine of at least 400 grams or more, a felony at the Fourth Judicial District Court of Rusk County, Texas."

Claimant was accorded the due process to which entitled under Rule 30. As in our Award No. 16 we find similarly here that having been convicted in court of a narcotic violation the Carrier acted consistent with its obligation to protect the public and its employees by withholding Claimant from service. To not have done so could have presented a hazard to Carrier, its employees or the public.

There was sufficient evidence adduced to support Carrier's conclusion as to Claimant's culpability. That the incident occurred while the Claimant was on a personal leave and in a state where this Carrier has no trackage does not serve to exculpate him of any of the Claimant's obligations. He still maintained an employee/employer relationship and as such he was bound by the appropriate rules and regulations. Carrier's drug policy states:

"Employees who are convicted in connection with incidents involving off the job drug activity will be considered in

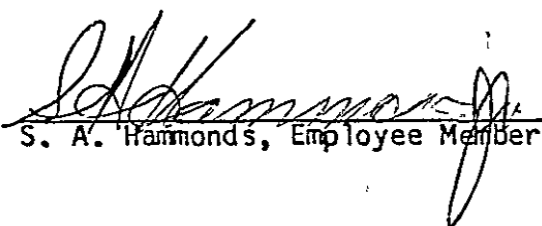
violation of this policy."

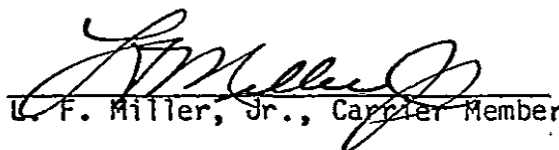
The policy was violated and the Claimant was subject to discipline.

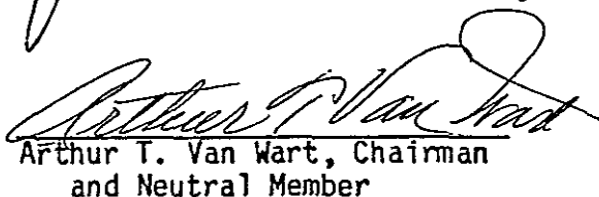
Carrier's action was not arbitrary, capricious nor discriminatory. Claimant had pled guilty in Court to the possession of a controlled substance, namely cocaine, of at least 400 grams or more. Claimant admitted that he pled guilty to a felony charge.

Public safety consideration permits and supports Carrier's acting within its discretion to dismiss an employee using, or in some other way, being associated with illegal-controlled substances.

Award: Claim denied.


S. A. Hammonds, Employee Member


L. F. Miller, Jr., Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued February 23, 1990.