

BEFORE PUBLIC LAW BOARD NO. 1837

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

Award No. 91

STATEMENT OF CLAIM: Claim of the Brotherhood that:

Claim on behalf of G. W. Hoag requesting that he be reinstated and paid for time lost, as a result of his dismissal from service following investigation held on January 19, 1993, in connection with conduct unbecoming an employee by being convicted of a drug-related charge in the Wells Superior Court, State of Indiana.

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

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 an employee when the Carrier learned that he had pled guilty to a drug related charge of possession of marijuana cultivating. The record reveals that the Claimant was originally sentenced to work release but after testing positive for drugs in his system, he was returned to jail.

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.

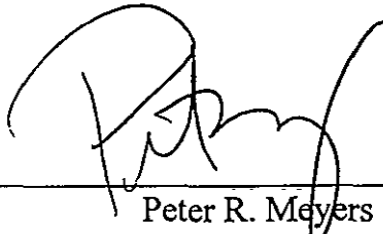
The Carrier's policy prohibits any drug related activity on the part of its employees. It states:

Employees who are convicted in connection with incidents involving off-the-job drug activity will be considered in violation of this policy and subject to dismissal.

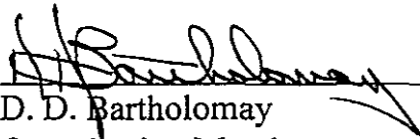
The Claimant in this case pled guilty to drug-related activity in violation of the Carrier policy. Public safety consideration permits and supports the Carrier's acting within its discretion to dismiss an employee using or being associated with illegal controlled substances even when off duty. This Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant. Therefore, the claim will be denied.

AWARD

Claim denied.



Peter R. Meyers
Neutral Member



D. D. Bartholomay
Organization Member



E. N. Jacobs, Jr.
Carrier Member

DATED: 1-3-95

DATED: December 21, 1994