

PUBLIC LAW BOARD NO. 2774

Award No. 131
Case No. 131

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM

- "1. That the Carrier violated the provisions of the current agreement and acted in an arbitrary, capricious and unjust manner when it dismissed Trackman David Yenez on January 11, 1984, on the basis of unproven charges.
2. Because of the violation referred to in Part 1, that Carrier now be required to return Mr. Yenez to his former position with seniority and all other rights reinstated unimpaired and with compensation for all time lost."

FINDINGS

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

Claimant had worked for the Carrier approximately three years at the time of his dismissal. Following an investigation held on January 11, 1984, he was found responsible for violating Rule 16 of Carrier's General Rules for the guidance of employees. Specifically, he had been found guilty after pleading guilty to possession of marijuana and had been given a fine and a jail sentence as a result of this infraction. At the time of his run-in with the law, claimant was on furlough.

Rule 16 provides as follows:

"Employees must not be careless of the safety of themselves or others; they must remain alert and attentive and plan their work to avoid injury.

Employees must not be indifferent to duty, insubordinate, dishonest, immoral, quarrelsome or vicious.

Employees must conduct themselves in a manner that will

not bring discredit on their fellow employees or subject the Company to criticism or loss of good will."

Carrier argues that the fact that claimant was in a furloughed status at the time of the incident involved in this matter is immaterial. At the time of the problem, claimant was still an employee and remained on the roster of Carrier and, for that reason, according to Carrier, was subject to the Carrier's rules. Carrier maintains that there is no doubt but that claimant was guilty of the charge of being in possession of a controlled substance (by his own pleading of guilty) and, therefore, there was no doubt about the appropriateness of the Court's action in sentencing him and fining him for this violation of the law. Carrier makes the point that whether or not the conviction was carried in the newspapers is immaterial. In a small town such as that involved in this matter, where the principal employer is the railroad, everyone knew about the conviction and the fact that the employee involved worked for the railroad. Carrier insists that it should not be required to tolerate the kind of employee whose conduct subjects him to the discipline of being jailed for possession of a controlled substance. The fact that the employee was on furlough is not relevant but Carrier will not condone this type of conduct by an employee no matter what his status.


The Organization argues that there is no evidence to indicate that claimant's actions in his conviction subjected the Carrier to criticism or loss of good will. There is no evidence whatever that Carrier suffered as a result of the acts committed by claimant. The Organization maintains that acts which are improper and are punished by civil law should not be compounded by the employer also taking action against an employee when there was no work violation involved. Thus, the Organization concludes that there was no showing by Carrier that the claimant was guilty of any of the rule charges indicated and, hence, Carrier has not borne its burden of proof in this matter.


As the Board views it, there is no doubt but that Carrier established sufficient evidence to indicate that claimant was guilty of violating Rule 16 of the Operating Rules. Admittedly whether Carrier suffered as a result of claimant's conviction for possession of marijuana is speculative. There is no evidence to


indicate that there was any publication of this information or any other evidence indicating that Carrier received any type of backlash as a result of the conviction of the furloughed employee. However, when one examines the language of Rule 16, it is apparent that whether or not the Company suffered criticism or loss of good will as a result of claimant's actions, his conviction for the particular infraction of local criminal law comes within the definition of dishonest or immoral behavior. When someone is convicted of a crime, as was true in this case, regardless of the seriousness of the crime, it certainly comes within the characterization of either being immoral or dishonest, at least. Additionally, the fact that the employee was in a furloughed status at the time does not detract from the fact that his conduct had a bearing on his employment relationship. For the reason indicated, the claim must be denied.

AWARD

Claim denied.


I. M. Lieberman, Neutral-Chairman


G. M. Garmon, Carrier Member


C. F. Foote, Employee Member

Chicago, Illinois
April 30, 1985