

PUBLIC LAW BOARD NUMBER 3445

Award Number: 68

Case Number: 68

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM

Claimant, W.J. Cooper, Jr. P.O. Box 85, Vossburg, MS 39366, allegedly charged with conduct unbecoming an employee account his allegedly being convicted of a felony charge of simple robbery.

FINDINGS

Claimant entered the Carrier's service on April 9, 1979.

By letter dated December 9, 1988, Claimant was directed to attend a formal investigation on charges of conduct unbecoming an employee. The investigation was conducted on December 21, 1988 at which time evidence was adduced which sustained the charge. Claimant was dismissed by letter dated December 27, 1988.

The issue to be decided in this dispute is whether Claimant was dismissed for just cause under the Agreement; and if not, what should the remedy be.

Claimant last worked on October 21, 1986, after which time, he was medically disqualified from service. In October 1988, Claimant contacted the Carrier about returning to work. The Carrier's Police conducted a

background check of Claimant relative to his return to work. In the course of that check, the Carrier learned that Claimant had been arrested on July 8, 1987 and charged with armed robbery. Claimant subsequently pleaded guilty to simple robbery and was sentenced to 5 years incarceration with 3 years suspended. Claimant was paroled on October 7, 1988.

The position of the Carrier is that Claimant was justly dismissed under the Agreement. The Carrier maintains that there is no doubt that Claimant pleaded guilty to robbery. The Carrier further contends that both the plea and the act precipitating the plea constitute unbecoming conduct. Based on the foregoing, the Carrier maintains that dismissal is warranted and is in proportion to the severity of the offense.

The position of the Organization is that Claimant was dismissed without just cause. The Organization maintains that the Carrier's "sole" basis for discipline is "copping a plea." The Organization contends, by implication, that pleading guilty is not sufficient basis for discipline. It asserts that, "It is not uncommon to cop a plea in the state of Mississippi...."


After review of the entire record, the Board finds that Claimant was dismissed for just cause under the Agreement.


The Carrier has established by substantive credible evidence in the record that Claimant pleaded guilty to charges of simple robbery and was incarcerated based on that plea. A guilty plea is proof of the charge to which the defendant pleads. Claimant, therefore, was reasonably found to have committed the robbery and the Carrier had adequate basis for finding

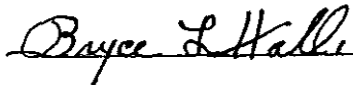
robbery to be conduct unbecoming an employee. Moreover, the implications from Claimant's involvement in robbery make it reasonable for the Carrier to find that he would be a detriment to its operation. Dismissal based on this record is warranted and is neither arbitrary, capricious nor discriminatory.

AWARD

Claim denied.


Neutral Member


Carrier Member


Organization Member

Date: FEB. 22, 1990