

PUBLIC LAW BOARD NUMBER 3445

Award Number: 69

Case Number: 69

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM

Claimant, Cleveland Gray, P.O. Box 1092, Purvis, MS 39475, allegedly charged with conduct unbecoming an employee concerning his arrest for a felony crime - sale of cocaine and manufacture of cocaine on Friday, December 9, 1988.

FINDINGS

Claimant entered the Carrier's service on September 26, 1974.

By letter dated December 16, 1988, Claimant was ordered to attend a formal investigation on charges of conduct unbecoming an employee based on his arrest for the sale and manufacture of crack cocaine. The investigation was held on December 22, 1988. By letter dated January 11, 1989, Claimant was dismissed based on evidence adduced at the investigation.

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.

On December 10, 1988, Claimant's supervisor, Division Engineer H. R. Anderson, recognized Claimant's picture in a newspaper article about a drug

arrest. On December 12, the Carrier's Police and Anderson contacted the local police authorities and verified that Claimant had been arrested and charged with the sale of cocaine and manufacture of crack cocaine. Claimant was indicted for these two felonies on December 9, 1988. During the formal investigation, Claimant testified that he received \$75 from an undercover narcotics agent to purchase cocaine from his cousin. Claimant made the purchase, keeping a \$25 fee for the service. After the investigation, on January 11, 1989, Claimant pleaded guilty to sale of a controlled substance (cocaine) and was sentenced to 5 years in prison.

The position of the Carrier is that Claimant was dismissed for just cause because his actions clearly constitute conduct unbecoming. The Carrier maintains that there is no dispute as to Claimant's arrest and admission of the narcotics transaction at the investigation and that these were sufficient bases for finding conduct unbecoming. The subsequent guilty plea is additional proof of bad conduct. The Carrier also contends that dismissal is warranted based on the serious nature of the crime Claimant committed.

The position of the Organization is that Claimant was dismissed without just cause, arguing that the Carrier lacked sufficient basis to find that Claimant had engaged in conduct unbecoming an employee. It maintains, by implication, that dismissal before a conviction is without sound basis. The Organization cites Claimant's unblemished record in support of his reinstatement.

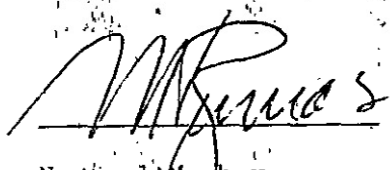
After review of the entire record, the Board finds that Claimant was

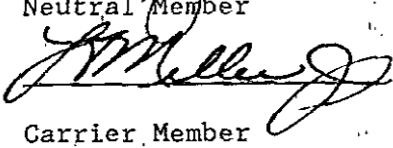
properly dismissed under the Agreement.

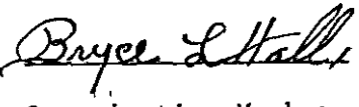
The Carrier has sustained its burden of proving conduct unbecoming an employee. It has established by substantial credible evidence in the record that Claimant was arrested for serious cocaine related crimes and that he admitted he purchased cocaine for the narcotics agent while retaining a fee for doing so. These actions by Claimant clearly constitute an unacceptable standard of conduct for an employee. The Carrier has a reasonable expectation that its employees will be law abiding and responsible. Conduct such as Claimant's is neither and cannot be tolerated in any case, but especially in an industrial work place such as the Carrier operates. Its responsibility to the public and its employees dictates that an employee cannot be involved in drug related activities; to be so involved is clearly unbecoming conduct. The Carrier's action was warranted and was neither arbitrary, capricious nor discriminatory.

AWARD

Claim denied.


Neutral Member


Carrier Member


Organization Member