

PUBLIC LAW BOARD NUMBER 3445

Award Number: 73

Case Number: 73

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM

Rogeg E. Johnson, Rt. 1, Box 63, Martin, GA 30557, allegedly charged and dismissed from service for conduct unbecoming an employee. Employees request he be restored to service with seniority and vacation rights unimpaired.

FINDINGS

Claimant entered the Carrier's service on June 22, 1981.

On August 18, 1987, Claimant was arrested and charged with possession of cocaine with intent to distribute, possession of marijuana with intent to distribute and possession of firearms during commission of a felony. The Carrier's Police learned of Claimant's arrest in September 1987 after the Credit Union manager reported to Claimant's supervisor (T. L. Hicks) that Claimant's car had been confiscated, and Hicks notified the Carrier's Police.

In September 1988, Claimant advised Hicks that he had been placed on probation. The Carrier's Police contacted the local police and obtained a copy of Claimant's guilty plea. Claimant pleaded guilty to felony possession of cocaine with intent to distribute, misdemeanor possession of

marijuana and possession of a firearm during commission of a felony. This information was received from local authorities on September 19, 1988.

By letter dated September 27, 1988, Claimant was notified to attend a formal investigation on charges of conduct unbecoming an employee in relation to his involvement with drugs and firearms. That formal investigation was initially convened on October 5, 1988, but was recessed until October 25, 1988 so that Claimant could appear with representation. By letter dated November 1, 1988, Claimant was dismissed based on the 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.

Rule 40 sets forth the procedures for imposing discipline, and paragraph (a) provides:

RULE 40. (a) An employee who has been in service 60 days or more will not be disciplined or dismissed without a fair and impartial investigation, which shall be held within ten (10) days of date of written notice to the employee that such investigation will be held. Such written notice, which will be given as promptly as circumstances will permit, will state the nature of the charge or charges against the employee.

The position of the Carrier is that Claimant was dismissed for just cause. The Carrier maintains that it proved conclusively that Claimant was guilty of serious criminal acts involving both drugs and firearms. It cites Claimant's guilty plea as clear evidence of his criminal activity. The Carrier contends that these serious criminal acts are conduct unbecoming an employee and warrant dismissal.

As to the procedural issue in this matter, the Carrier contends that Claimant was notified of the investigation in compliance with Rule 40 and that he received a fair and impartial hearing. The Carrier acknowledges that it took no disciplinary action until after it was cognizant of Claimant's guilty plea and its attendant conviction. It maintains that its first awareness of the conviction came on September 19 and that since the investigation was convened on October 5, it was within 10 days, thereby complying with the rule. The Carrier argues, by implication, that it is the conviction, not the arrest, that was the unbecoming conduct.

The position of the Organization is that Claimant was unjustly dismissed based on procedural defects and on the merits.

As to procedure, the Organization maintains that Claimant was not brought to an investigation in compliance with Rule 40 and that he, therefore, should be reinstated. The Organization contends that the Carrier first had knowledge of Claimant's alleged offense in September 1987, but did not convene an investigation until October 1988 -- more than a year.

On the merits, the Organization contends that Claimant has paid his debt to society and that his dismissal is unjust because it is overly harsh -- not in proportion to the offense. The Organization does not deny the occurrence of the offense.

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

The Carrier has established by substantive credible evidence in the record that Claimant pleaded guilty to several serious charges involving both illegal drugs and firearms. The Organization acknowledges these facts. It is well settled that involvement with illegal drugs has a direct and negative impact on the operations of the Carrier. Such behavior is clearly beyond the acceptable bounds of behavior for an employee; it is unbecoming. The Carrier is within its rights to demand that its employees obey the civil law, especially when the law has implications for operational safety and efficiency as do the drug and firearms laws. Dismissal was reasonable under the circumstances and was neither arbitrary, capricious nor discriminatory.

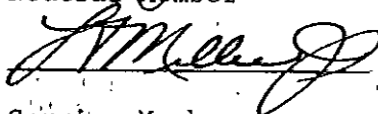
As to the procedural question, the Organization's argument of timeliness is not supported by the facts. There are two variables in this case: the act which is the conduct of which the Carrier must be cognizant and the date of cognizance of the act triggering the investigation. It is the conviction (based on the guilty plea) not the arrest, which constituted the unbecoming conduct in this matter -- it is that act of which the Carrier must be aware. The Carrier withheld investigation until a conviction in the matter; it is within its rights to do so. The investigation clearly occurred within 10 days of the Carrier's knowledge of the conviction. It is well settled that the Carrier is not required to investigate until it has cognizance of the act which will trigger the investigation. The investigation was held within the time limits set forth in Rule 40.

AWARD

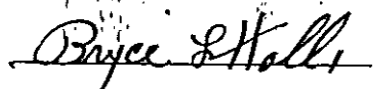
Claim denied.



Neutral Member



Carrier Member



Organization Member

Date: FEB. 22, 1990