

PUBLIC LAW BOARD NO. 3530

Award Number: 84

Case Number: 84

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

Extra Force Laborer G. W. Taylor, 332 Lavender Lane, Virginia Beach, VA 23462, was dismissed on December 2, 1985 for alleged conduct unbecoming an employee. Claim was filed by the Employees in accordance with Railway Labor Act and agreement provisions. Employees request reinstatement with pay for all lost time with vacation and seniority rights unimpaired.

FINDINGS

Claimant entered the Carrier's service on September 21, 1981. Claimant went on furloughed status on October 3, 1984.

By letter dated October 8, 1985, Claimant was notified to attend a formal investigation on charges that he behaved in a manner unbecoming an employee when he was convicted September 24, 1985 of possession of marijuana with intent to distribute. The investigation was held November 13, 1985 by mutual agreement. By letter dated December 2, 1985, Claimant was advised

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that the evidence adduced at the investigation proved the charges alleged and he was dismissed.

The question 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 April 1, 1985, Claimant was charged with possessing marijuana with intent to distribute. On May 9, 1985, he was charged with two counts of possession of illegal drugs. Each charged offense is a felony. These facts did not come to the Carrier's attention until August 28, 1985.

Claimant contacted the Carrier in August 1985 for verification that monies discovered in his possession during a police search of his house had been received from the Claims Department. The Carrier's Captain of Police, D. R. Sanders, researched the charges against Claimant and learned the full extent of those criminal charges.

On September 24, 1985, Claimant pleaded guilty to misdemeanor possession of marijuana. He was convicted and sentenced to twelve months in jail, with all but 30 days suspended and two years' probation. Claimant was charged with conduct unbecoming an employee and, during the course of the investigation, was charged with violation of Rule 1714 which provides:

1714. The conduct of any employee leading to conviction of any felony, or of any misdemeanor involving the unlawful use, possession, transportation, or distribution of narcotics or dangerous drugs, or of any misdemeanor involving moral turpitude

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is prohibited.

The Memorandum Agreement effective May 1, 1984 between the parties provides that an investigation which could lead to the dismissal of an employee "shall be held within 30 days of first knowledge of the offense."

The position of the Organization is that Claimant was dismissed without just cause both as to the merits and as to matters of procedure.

On the merits, the Organization contends that the Carrier is without power to discipline an employee for his conduct off duty when such conduct neither harms the Carrier's product or reputation, nor renders the employee unable to perform duties, nor leads to other employees being unable to work with him. Since none of these conditions applied, the Organization maintains, the Carrier cannot justly discipline him for his criminal conduct while on furlough.

On the questions of procedure, the Organization maintains that the Carrier did not conduct an investigation of Claimant's alleged offense within 30 days as required by the Agreement. The Organization contends that the 30 days began to run on August 28, 1985, when the Carrier received knowledge of the criminal charges through Sanders' research.

The position of the Carrier is that Claimant was guilty of conduct unbecoming an employee, was treated in accordance with procedures provided in the Agreement and was properly dismissed.

As to the procedural question, the Carrier contends that it brought charges against Claimant within 30 days of his guilty plea. The Carrier asserts that it was not until the plea and conviction that it had "knowledge" of the offense. Until that time, the Carrier contends, there had been no firm information as to Claimant's offense.

On the merits, the Carrier maintains that Claimant, by his own admission, possessed marijuana and that this involvement with drugs constituted conduct unbecoming an employe. Further, the Carrier contends that it is justified in dismissing Claimant even though he was in furloughed status because Claimant was still an employe of the Carrier at the time. The Carrier also cites the extreme concern about drug and alcohol use in the railroad industry and argues that public safety considerations support if not compel Claimant's dismissal.

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

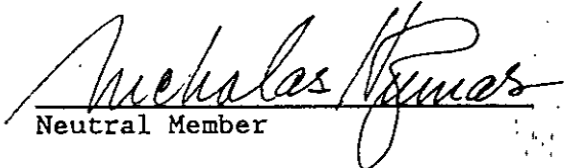
The Carrier has established through substantial, credible evidence in the record that Claimant possessed illegal drugs. In light of the particular threat posed by drug use in the transportation industry (to fellow employes, the public and the Carriers' business and reputation), such illegal action constitutes conduct unbecoming. Moreover, the evidence established a violation of Rule 1714. On either basis, there is substantial, credible evidence in the record to support the action of the Carrier.

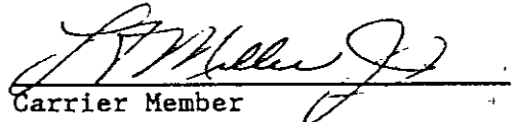
As to Claimant's furloughed status, he was still in an employment relationship with the Carrier. He maintained certain rights of employment such as recall, and likewise incurred obligations and was subject to discipline. The Carrier's action was neither arbitrary, capricious nor discriminatory.

As to the procedural aspects, the Organization's contention that the investigation was not timely is without merit. It is well settled that provisions such as the one in this Agreement contemplate that the time limit run from the time the Carrier has cognizance of the offense. Dependable cognizance did not occur until the guilty plea.

AWARD

Claim denied.

  
Neutral Member

  
Carrier Member

  
Organization Member

Date: JUNE 12, 1989