

BEFORE SPECIAL BOARD OF ADJUSTMENT 1037

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CSX TRANSPORTATION, INC.

Case No. 38

STATEMENT OF CLAIM:

Claim that Mr. L. McLeod, ID# 171016, be reinstated to service and made whole for all lost wages and benefits account being dismissed from service as a result of an investigation which was held on September 29, 1994.

FINDINGS:

Claimant L. McLeod was employed by the Carrier as a trackman.

On July 29, 1994, the Carrier notified the Claimant to attend a formal investigation into the charge of his having violated CSX Operating Rule 501, conduct unbecoming an employee, as a result of his incarceration at the Hardee County Jail.

After several postponements, the hearing commenced on September 29, 1994. The Claimant was not present at the hearing. In a letter dated October 18, 1994, the Carrier informed the Claimant that he had been found guilty as charged and was dismissed from the service of the Carrier effective that date.

The Claimant filed his appeal, challenging the Carrier's decision. The parties being unable to resolve the issue, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there is not sufficient evidence in the record to support the finding that the Claimant was

guilty of conduct unbecoming an employee because he was incarcerated for the period July 6, 1994, through approximately July 29, 1994. There is no question that the Carrier has adequately proven that the Claimant was in fact incarcerated during that period. The Carrier presented documents verifying that the Claimant was arrested pursuant to a warrant on July 6, 1994. His first arrest was for an incident alleged to have occurred on June 25, 1994. Another warrant was issued for his arrest for an incident that was alleged to have occurred on July 5, 1994, and he was served with that warrant while he was still in jail on July 19, 1994.

However, the real question to be addressed in this case is whether the Claimant's incarceration constitutes conduct unbecoming an employee, which would be a violation of Rule 501 and which would ultimately justify his discharge. This Board finds that it does not.

It is fundamental that management's rights to discharge employees for conduct that occurs away from the workplace is derived strictly on whether or not the improper conduct can be said to negatively affect the operations of the Carrier in some reasonably discernable way. Generally, an employer must establish not only that the violation was sufficiently serious and unmitigated by offsetting factors to justify discharge, but also that the outside activity adversely affected the employer's business in some observable fashion. In other words, did the wrongful conduct negatively affect the business of the employer, or in some way impact workforce morale, community image, or other

legitimate interests of the employer.

In this case, although the record is not completely clear, it appears that the arrest of the Claimant, who has served the Carrier without any previous discipline since 1976, related to his alleged violation of an injunction ordering him to keep away from his wife. There is no showing in the record that the Claimant's action which led to his arrest in any way impacted the Carrier's operation or put the Carrier in a bad light. It should be noted that at the time of the hearing, the Claimant had not yet been convicted of any crime. He had simply been arrested and was unable to make bond and was in jail.

Numerous Boards have upheld discharges in cases where employees have failed to come to work because they are being held in jail. This Neutral, as well as numerous others, has also held that being incarcerated is not an adequate excuse for failing to show up for work. However, in this case, the Claimant was not discharged for failing to come to work. He had been discharged for conduct unbecoming an employee.

Since the arrest of this employee for an alleged domestic situation does not reveal any negative impact on the Carrier, this Board must find that there was no violation of the rule prohibiting conduct unbecoming an employee by the Claimant. He was simply arrested, and whether or not that arrest was proper has yet to be decided.

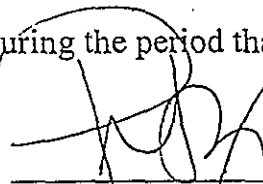
Consequently, this Board has no choice but to sustain the claim. With respect to any back pay, this Board has no evidentiary basis upon which to award any back pay in this matter. The Claimant has been in jail for almost the entire month of July 1994.

There is nothing in the record that indicates that he was ever let out of jail. Moreover, at this point, the Claimant may have been convicted of the crime with which he was charged. Certainly, numerous Boards have upheld discharges of employees who have been convicted of crimes.

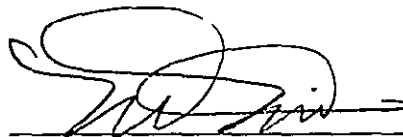
Since we are unable to determine whether or not the Claimant would ever have returned to work after his arrest in July 1994, this Board is without sufficient basis to award any back pay.

AWARD

Claim sustained in part. The Claimant was improperly disciplined because just the fact of his arrest does not prove that he engaged in conduct unbecoming an employee. He will be awarded no back pay since it is not clear from the record if he was ever in a position to come to work during the period that he was held out of service by the Carrier.

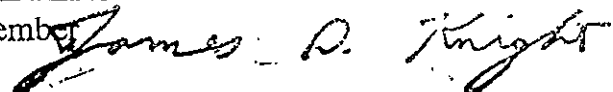


PETER R. MEYERS
Neutral Member

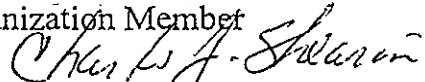


Carrier Member

DATED: 2/22/95



James R. Knight
Organization Member



Charles F. Swanson
DATED: 2/24/95