

SPECIAL BOARD OF ADJUSTMENT NO. 1016

**AWARD NO. 139
CASE NO. 139**

**PARTIES TO
THE DISPUTE:** Brotherhood of Maintenance of Way Employees

vs.

Consolidated Rail Corporation

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied

DATE: July 21, 2001

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Foreman D. G. Packe for his alleged conduct unbecoming an employee in connection with the charge that he violated 'General rule D of the Norac Operating rules (which reads in part "Employees must also refrain from conduct which discredits the Company"). This, when you were arrested on October 29, 1997 for drug related activities and a subsequent article in the Greensburg Tribune Review referred to you as a Conrail employee.' was without just and sufficient cause, based on unproven charges and in violation of the Agreement (System Docket MW-5076-D).
- (2) The Claimant shall be afforded the remedy as prescribed in Rule 27, Section 4."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Claimant was dismissed after a newspaper article reported his arrest for drug related charges and identified him as a Carrier employee. The front-page article contained the headline reference to a "major drug arrest." It described how a two-year undercover investigation confiscated more than six pounds of marijuana, \$9,000 in cash, and 30 weapons from Claimant's home. It noted that Claimant and his wife were charged with multiple counts of possession of a controlled substance and criminal conspiracy. In addition, the article reported that Claimant was individually charged with six more counts for delivery of a controlled substance after agents made a \$1,200 drug buy from him.

Claimant was removed from service on November 17, 1997. After hearing held December

12, 1997, Carrier found him guilty of discrediting conduct and dismissed him on January 6, 1998. Claimant's service with Carrier dated from August 15, 1975.

The Organization based its challenge to the discipline essentially on two grounds: First, Claimant's arrest occurred off duty and off Carrier property. As such, there is no proper connection with his employment to justify the Carrier's action. The Organization cited twelve prior awards on this point in support of its contention. It also contended that no proof of actual harm to Carrier's reputation was provided during the investigation hearing. Secondly, the Carrier noted Claimant's long years of service and maintained they were clear of significant discipline despite the fact that Carrier's records reflected a prior dismissal for a Rule G violation. According to the Organization, Claimant was not reinstated on a leniency basis, as Carrier maintained. The Organization provided a copy of Award No. 55 of Public Law Board No. 4615 to show the absence of any references to a leniency reinstatement. Accordingly, the Carrier's decision to impose the penalty of dismissal was improper in the Organization's view.

The Carrier also cited prior awards holding that drug related misconduct was sufficiently discrediting that dismissal was warranted. It also cited the well-known Elkouri treatise on arbitration for the proposition that drug dealing automatically established the requisite nexus to the workplace to justify discharge or discipline. Carrier also maintained that Claimant did benefit from a prior leniency reinstatement following his discharge for a positive drug test in March of 1988.

The employer's ability to discipline employees for off-duty off-premises misconduct has been the subject of extensive arbitral thought in the railroad industry and elsewhere and need not be restated in detail here. Suffice to say that this Board has reviewed the cited awards and treatise context repeatedly. After careful review, we are compelled to find that the facts in this record establish the requisite nexus. Drug dealing is one of the most reprehensible forms of criminal conduct. The manner in which the newspaper article described the details of Claimant's arrest intensified that status. Although Claimant's identity was found on jump-page 8 of the newspaper, he was clearly identified as a Conrail employee.

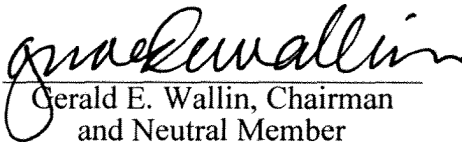
The awards cited by the Organization have been carefully considered. After detailed examination, it is seen that all of them are inapposite as a result of significant factual differences. They either involved different rules that required actual proof of criticism or loss of goodwill or they did not involve adverse publicity, such as we have here, that identified the claimant's employer. Of the awards cited where a newspaper article reported the conduct, none identified the employment relationship with the respective carrier. Indeed, several of the awards strongly suggested that discipline would have been proper had the employer's identity been named. An example of this is Third Division Award No. 30554 between these same parties. The Third Division made multiple references to the fact that the Carrier suffered no adverse publicity. The same cannot be said on this

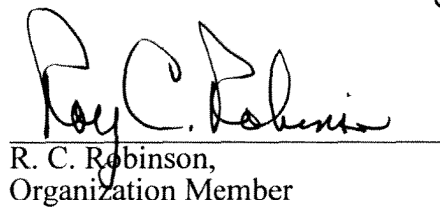
record.

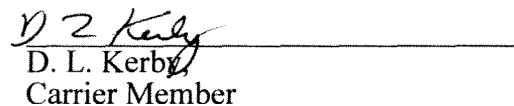
In light of the foregoing discussion, we do not find Carrier's action to be arbitrary, capricious, unreasonable, or lacking in a rational basis.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


R. C. Robinson,
Organization Member


D. L. Kerby,
Carrier Member