

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1037

Case No. 34

PARTIES: CSX TRANSPORTATION, INC.

TO :

DISPUTE: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

Dismissal of Mr. N. Williams, ID 162359, as a result of the investigation held concerning him on November 3, 1993.

FINDINGS:

The Claimant, N. Williams, was employed by the Carrier as a trackman.

On September 16, 1993, the Claimant was notified to attend a formal investigation of an article which appeared in an Okeechobee newspaper which indicated that the Claimant had been involved in a traffic incident relating to the sale of cocaine which subsequently led to the Claimant's arrest for "selling cocaine, possession of cocaine with intent to sell, willful and wanton reckless driving and fleeing attempting to elude". On November 12, 1993, the Carrier, after an investigation, dismissed the Claimant for violation of the rules prohibiting conduct unbecoming an employee.

On November 23, 1993, the Claimant elected to appeal the discipline assessed to him. Therefore, this matter comes before this Special Board for expeditious resolution.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of conduct

unbecoming an employee.

The record reveals that the Claimant has failed to come to work since September 7, 1993. The Carrier has been informed by the Claimant's son that he is currently incarcerated. On or about September 7, 1993, an article appeared in a local newspaper and said article was received into evidence. That article identified the Claimant as a "man accused of selling cocaine" who "led deputies on a high speed chase". The article also states that the Claimant was arrested on September 7, 1993 and charged with possession of cocaine, possession of cocaine with intent to sell, fleeing to elude, and willful and wanton reckless driving. The newspaper article also states that the Claimant was booked into the county jail and was "under a bond of \$106,000".

Although the Organization argues that the Claimant has pled not guilty and has not yet been found guilty of the charges, this Board finds that the record contains sufficient evidence that the Claimant was involved in an incident which would constitute conduct unbecoming an employee. Although the standard of proof in a criminal case is beyond a reasonable doubt, in a case involving a Claimant's employment, the standard of proof is a great deal less. By virtue of the fact that the Claimant has not appeared at work since the incident, plus the facts set forth in the newspaper article and the confirming telephone conversation with the Claimant's son, this Board must find that the Claimant was guilty of the charges.

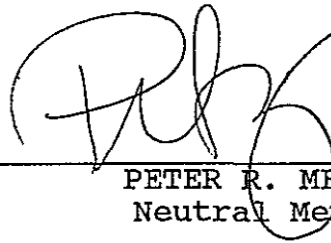
Once this Board has determined that there is sufficient

evidence in the record to support the guilty findings, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

The Claimant's personal record reveals that in September of 1992, the Claimant was terminated for conduct unbecoming an employee. He was subsequently restored to service by agreement with the Organization. Given that previous record and the fact that the Claimant has already received a "second chance", this Board cannot find that the action taken by the Carrier was unreasonable, arbitrary or capricious. Therefore, the claim must be denied.

AWARD:

Claim denied.



PETER R. MEYERS
Neutral Member

Carrier Member

Organization Member

Dated: _____