

PUBLIC LAW BOARD NO. 4357

PARTIES
TO
DISPUTE:

United Transportation Union (Yardmaster's Department)
and
Norfolk & Western Railway Company

STATEMENT OF CLAIM:

Claim of Bellview Yardmaster, G. P. Smith, for removal of discipline and payment for all time lost including wages, overtime, vacation and fringe benefits with full seniority rights restored. He was dismissed from all service from the Norfolk & Western Railway Company by Trainmaster W. G. Skillman on March 7, 1991, in a harsh and excessive manner.

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The record indicates that Claimant received a letter from Carrier dated January 21, 1991, which provided in relevant part as follows:

You are hereby charged with conduct unbecoming a Norfolk Southern Railway employee as a result of your being arrested on January 16, 1991 for possession of cocaine. . . .

The investigation, with respect to this charge, was held on February 21, 1991, and on March 7, Claimant was notified that he was dismissed from service after having been found guilty of conduct unbecoming an employee as indicated in the charge.

The record indicates that the charge herein was triggered by a newspaper article in the local paper which indicated that the Claimant herein had been arrested for possession of cocaine worth approximately \$21,000. This was apparently, accordingly to the article, as a result of a two month long investigation with respect to his alleged distribution of illegal drugs. Based on the two-month investigation, officers also seized rifles, drug paraphernalia, and other items in his home. At the investigative hearing Claimant testified that he had been arrested for the possession of cocaine, and later in the criminal proceedings, he pleaded no contest to two counts of trafficking of cocaine, and was found guilty of the two counts. He was sentenced to a total of four years in prison and fined \$5,000 for this particular criminal infraction.

The Organization initially has made a number of procedural arguments in support of its position. Those issues raised included the fact that Petitioner insists that the hearing was untimely, there was prejudgment, there was an untimely hearing notice, and furthermore, no specific rule violation was cited by Carrier. In addition, Petitioner insists that Carrier attempted to expand the evidentiary record following the investigative hearing improperly. In addition, the Organization insists that Claimant was guilty of drug addiction only, and nothing beyond that contrary to Carrier's contentions. Also, it is a primary argument that there was no rule cited by Carrier, as the basis for disciplinary action. The Organization notes that the charge of conduct unbecoming an employee is totally inapplicable in this situation, since no public damage was caused to Carrier's reputation in this particular case.

Carrier maintains that it is apparent that Claimant's own admissions make it abundantly clear that he was involved in illegal drug distribution. The newspaper articles, the police records, and Claimant's own statements substantiate this conclusion. The post-hearing events support this conclusion, since they involve not only guilty pleas, but also stiff sentences by the courts. Carrier maintains that this record alone is sufficient to demonstrate that there was conduct unbecoming an employee warranting the discipline which was imposed.

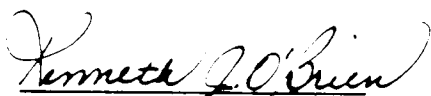
The Board indicates initially that it can find no support for the procedural allegations made by Petitioner. The case will be decided on its merits only. It is undisputed that Claimant pleaded guilty to possession of the illegal drug, as indicated in the charge. Furthermore, his admission was supported by the criminal proceedings, which followed his termination. The Board does not agree with the Petitioner's argument that the evidence does not indicate any rule violation occurred. It has long been held that conduct unbecoming an employee particularly, includes such matters as known trafficking in drugs or possession of drugs with intent to distribute such drugs. In this case there is clear and overwhelming evidence that Claimant was in possession of drugs with intent to distribute at least. In this industry, there has been a long practice of dismissals under these circumstances. Actions such as that of Claimant herein, not only either bring reproach to the integrity of Carrier, but obviously cause a lack of faith in the employees ability to function effectively in view of this illegal activity. There is no doubt in this case but that Claimant was guilty of the charges preferred against him, which were indeed indicative of the violation of Carrier rules, and the decision to terminate was appropriate and should not be tampered with.

AWARD

Claim denied.



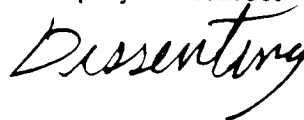
I. M. Lieberman, Neutral-Chairman



K. J. O'Brien
Carrier Member



R. C. Arthur
Employee Member



Norfolk, Virginia
December 30, 1993