

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 13072
Docket No. 12888
96-2-94-2-31

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(Brotherhood Railway Carmen Division
(Transportation Communications International
(Union

PARTIES TO DISPUTE:

(
(Union Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the Committee of the Union:

1. Carrier violated the Agreement at Hinkle, Oregon, on July 2, 1993, when it arbitrarily, capriciously and without just cause dismissed Claimant R.J. Furman from its service.
2. Carrier shall immediately reinstate Claimant R.J. Furman to its service and accord him his contractual right to exercise seniority as provided by the Agreement.
3. Carrier shall compensate Claimant Furman for all wages and benefits, including health insurance benefits lost as a result of its violative action commencing July 2, 1993, and continuing until Claimant is returned to service and his record cleared."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant, employed as a Carman at Carrier's Hinkle, Oregon facility, was charged and subsequently pleaded guilty to prostitution, a Class A misdemeanor, involving an incident occurring off-duty. The Oregon Circuit Court entered a Judgment of Conviction and Sentence on June 1, 1993, placing Claimant on probation for 36 months, giving him a suspended sentence of 180 days and a fine of \$1000.00, and prohibiting him from initiating contact with juvenile females during his probation period.

Upon learning of Claimant's guilty plea, Carrier immediately withheld him from service and ordered him to appear for an Investigation on the charge of being convicted of a misdemeanor involving moral turpitude in violation of Rule 607 of Form 7908. The Investigation was held on June 22, 1993, at which time Claimant was present, represented and testified on his own behalf. On July 2, 1993 Claimant was notified that he had been found guilty of the charges and was dismissed from service.

Rule 607. Conduct, reads, as follows:

"Employees must not be:

1. Careless of the safety of themselves or others;
2. Negligent;
3. Insubordinate;
4. Dishonest
5. Immoral; or
6. Quarrelsome.

The conduct of any employee leading to conviction of any misdemeanor involving moral turpitude (including without limitation, the unlawful use, possession, transportation or distribution of narcotics or dangerous drugs including marijuana or controlled substances) or of any felony is prohibited."

The Carrier argues that Claimant's plea of guilty is sufficient evidence of guilt of the charges, and since his off-duty conduct involved moral turpitude, the penalty was not arbitrary, capricious or an abuse of its discretion. Second Division Award 11948; Third Division Awards, 29971, 21825, 29778, 28346. The Organization argues that a higher standard is required to prove just cause in an off-duty conduct case, and that the Carrier failed to show any adverse impact or harm created by Claimant's conduct; Third Division Award 22734. The Organization also argues that Rule 607 should not be held to apply to off-duty conduct, and that Carrier's action is void ab initio since it had no rightful jurisdiction over the charged offense.

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 violating Rule 607 when he entered a guilty plea of the Class A misdemeanor of Prostitution. The fact that his plea bargain was motivated by his desire to save his daughter's reputation does not change the fact that he entered into it voluntarily and must be held responsible for its implications; Third Division Award 29971. Further, the Investigation revealed that the nature of the charges against Claimant were highly publicized locally, known to fellow employees and were detrimental to the Carrier's reputation. Rule 607, by its terms, does not limit its application to conduct occurring on duty, and clearly prohibits conduct leading to a conviction of a misdemeanor for moral turpitude. Claimant admitted his sexual misconduct fell under the Carrier's guidelines. This Board has held that Carrier has the right to discipline an employee for off-duty conduct involving acts of moral turpitude; Second Division Award 11948.

Having determined that there is sufficient evidence in the record to support a guilty finding, we 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 facts clearly establish that Claimant, a short term employee, engaged in serious misconduct involving moral turpitude. Under such circumstances, we cannot say that the Carrier acted unreasonably or exceeded the appropriate limits of its discretion in removing him from service. Second Division Award 11948; Third Division Award 29778.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 9th day of December 1996.