

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19263
Docket Number MSX-19430

Robert M. O'Brien, Referee

(Joseph A. Hammerle, Jr.

PARTIES TO DISPUTE: (

(REA Express, Inc.

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission covering an unadjusted dispute between myself and the REA Express Company, 214 E. 42nd St., New York, New York, involving the question:

I have (or had) been employed by REA Express for 34 years. On a day when I was not working I was arrested off the job on a "Disorderly Persons" charge. I was brought to a hearing concerning this arrest by the REA and dismissed from the company.

The Company and Union rules state "grounds for dismissal must be either Murder, Rape or Theft on an arrest charge". I was not guilty of any of these charges. My appeal was denied.

OPINION OF BOARD: On September 18, 1969, Claimant was arrested for falsely pulling a fire box alarm. At his trial in court, he was found guilty and sentenced to six months in jail. The above incident admittedly occurred while Claimant was off duty.

Upon learning of this, REA Express (REA) cited Claimant for investigation on September 29, 1969 for committing a crime and thereby violating Rule 67 of REA's General Rules and Instructions, which Rule reads in pertinent part: "The personal conduct and deportment of employes must be such as to reflect credit upon themselves and on the Company." Claimant was found guilty of the charge and dismissed from REA service.

In discipline claims such as the one before us, this Board is unwilling to overturn the assessment of discipline unless it finds that the employer acted arbitrary, or capricious or that the discipline imposed was excessive under the circumstances. Such was not the case here.

Claimant was afforded the procedural safeguards guaranteed by Rule 11(a) of the applicable Agreement. Regarding the imposition of discipline, the transcript of the investigation clearly indicates that Claimant was found guilty in court of entering a false alarm on September 18, 1969, and he served 3 months and 5 days in jail therefore. There can be no doubt that this constituted a violation of Rule 67 of REA's General Rules and Instructions, as Claimant certainly

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brought discredit upon REA, as well as himself. Nor was the discipline of dismissal excessive in light of the seriousness of the offense and Claimant's prior record. It makes no difference that Claimant was off duty when the violation occurred. REA's action was fair and reasonable and we shall not overturn it.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E.A. Kellens
Executive Secretary

Dated at Chicago, Illinois, this 9th day of June 1972.