

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21499
Docket Number CL-21460

David C. **Randles**, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**

PARTIES TO DISPUTE: (

(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8092) **that:**

1. Carrier violated the Clerks' Rules **Agreement**, which became effective March 1, 1973, when it **dismissed** Mr. C. C. Duniphan from its service as a result of investigation **held Friday**, February 15, 1974.

2. Carrier's action was unjust, arbitrary and **an** abuse of discretion.

3. Carrier shall now be required to compensate **Mr.** Duniphan for all time lost beginning February **6**, 1974, and continuing until he is returned to Carrier's service.

OPINION OF BOARD: Claimant was dismissed from Carrier's service for violating that part of Carrier's Rule "**P**" which states, "the arrest of an employee by proper police or legal authority with **resultant** filing of charges . . is sufficient cause for discipline." Claimant was admittedly arrested, as well as indicted, but the indictment was subsequently dismissed by the court, and the **ultimate** question before this **Board** is whether Carrier's rule authorizing discipline solely on the basis of the arrest and indictment is arbitrary.

Recent Second Division Award **7130** (Twomey) involved this identical Carrier rule as well as practically identical facts, and the claim therein was sustained on the basis of the following ruling:

" . . . The initial question for us is whether the applied portion of **Company** Rule '**P**', 'the arrest of an employee by proper police or legal authority with resultant filing of **charges** . . . is sufficient cause for discipline,' is a reasonable rule? We find that it is not. We find such a rule, as applied in the instant case, to be manifestly unreasonable. Certainly the Carrier has the right to establish reasonable operating rules, but to have a rule that subjects an

"employee to discipline-the ultimate discipline of dismissal-on the sole basis of the employee having been arrested and charged with a crime, is contrary to reason and fundamental fairness. It is a harsh fact of life in our society that innocent persons may be erroneously arrested and charged with a crime, only to be later fully exonerated . . ."

We concur in this ruling and sustain the instant claim.

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

That the parties waived oral bearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** 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 violated.

A W A R D

The Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Parker
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1977.