

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21553  
Docket Number MW-21507

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: { (Brotherhood of Maintenance of Way **Employees**  
{ **Louisville** and Nashville Railroad **Company**

STATEMENT OF CLAIM: Claim of the **S t e m C o m m i t t e e** of the Brotherhood that :

(1) The dismissal of **Track** Repairman Robert **Allen** Dunn on July 24, 1974 was without just and sufficient cause and **in** abuse of the Carrier's discretion /System File 1-17 (26)/D-105553 **E-306-147**.

(2) The Carrier shall now pay Claimant Dunn for all time lost from the date of his dismissal (7-24-74) to the date of his reinstatement and return to service on February 24, 1975.

OPINION OF BOARD: On June **29, 1974**, the Claimant, accompanied by two friends, was arrested by the Mobile, Alabama Police Department and charged with "Possession of Marijuana for Personal Use" and "Possession of Narcotic Paraphernalia". On July 24, 1974, Claimant was convicted of the foregoing charges in the Mobile, Alabama City Municipal Court. Carrier conducted an investigation on August **9, 1974** charging Claimant with violation of General Rule G of the Rules and Instructions of the Maintenance of Way Department as a result of his conviction in the City Municipal Court. Claimant was found guilty as charged and dismissed from service effective July 24, 1974. Claimant had appealed his conviction in the City Municipal Court and on **November 7, 1974** both charges were **Nolle Prossed** on motion of the Assistant District Attorney. When Carrier was apprised of this they offered to reinstate **Claimant** to service on a leniency basis but without **pay** for time lost. **Claimant** refused, however. Claimant did return to service on February 24, **1975** and he is herein claiming pay for all time lost as a result of his dismissal on July 24, **1974**.

The evidence adduced at the August **9, 1974** investigation reveals that Claimant was dismissed from service solely as a result of his conviction in the **Mobile** City Municipal Court on the charge of possession of marijuana for personal use and possession of narcotic paraphernalia. No evidence, other than his conviction, was introduced to **substantiate** the allegation that Claimant had violated General Rule G. It is undisputed that the charges against **Claimant** were subsequently **Nolle Prossed** when his case was appealed to the Circuit Court of Mobile county.

7. It is the considered opinion of this Board that when Carrier elected to dismiss Claimant from service solely based on his conviction in **Municipal** Court, with **full** knowledge that Claimant had appealed his conviction to a higher court, they thereby assumed the consequences that his conviction might eventually be overturned by a higher court.' In fact, **Claimant's** charges were **subsequently Nolle Prossed**. **It matters** not that Carrier acted **in** good faith when they **dismissed** Claimant effective July 24, 1974. Someone must bear the **consequences** of this precipitous action and this **Board** believes it should be **t**. Carrier, not the Claimant. There is simply no evidence in the record to establish that Claimant was indeed **guilty** of violating General Rule G. Accordingly, **he must** be restored to service and paid for all time lost **consistent with Rule 27 (b)**

**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 **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

Claim sustained. Claimant to be compensated as required by Rule 27 (b).

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1977.