

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **21949**
Docket Number CL-21882

Herbert **L.** Marx, Jr., Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
PARTIES TO DISPUTE: (
(Southern Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-8245) that:

(a) Carrier violated the Agreement at Charlotte, North Carolina, when it dismissed Mr. Robin **H. Schipman** from the service of the **Carrier** for alleged conduct unbecoming an employee in that he was arraigned in United States Federal Court, Charlotte, N. C., on January 6, 1975 before **Woodrow W. Jones** on charge of unlawful possession of heroin, adjudged guilty and sentenced to four years suspended, five years probation with fine of **\$1,500.00**.

(b) Carrier shall be required to restore Mr. Robin **H. Schipman** to the service of the Carrier with seniority and all rights unimpaired.

OPINION OF BOARD: Claimant was dismissed on March 21, 1975, on charges that he was "arraigned **in** United States Federal Court, Charlotte, N. C., on January 6, 1975, before Judge **W. Jones** **on** charge of unlawful possession of heroin, unlawful possession with intent to distribute heroin, covered by Title 21 United States Code, Sec. 841(a) **(1)**, adjudged guilty and sentenced to four years suspended, five years probation, with fine of \$1,500."

A hearing, conducted on April 8, 1975, resulted **in** confirmation by the Carrier on April 10, 1975, that the dismissal would remain in effect. There was **no** challenge that the hearing was conducted in less than a fair and impartial **manner**.

The genesis of the Court action finding **Claimant** guilty occurred prior to his employment by the Carrier. Claimant's employment **commenced** on July 22, 1974, and, after a change in **assignment**, he acquired Clerk seniority on September 26, 1974. It is uncontested that the Carrier, prior to March 21, 1975, had no contemporary **knowledge** of the Claimant's arrest **in** August 1974 **and** conviction in January 1975. The Carrier asserts

that if it had the **knowledge** of the Claimant's pre-employment activity leading to his conviction, it would not have hired the Claimant.

The conviction itself occurred while the Claimant was employed by the Carrier. Although Claimant's testimony as to what occurred would appear to shed a sympathetic light on his role, the Carrier properly could rely on the actual Court record and the Claimant's guilty plea.

Given the Carrier's undisputed strong and unequivocal stand toward narcotics and any **employee** connection therewith, the Board cannot find that the Carrier acted in an arbitrary or improper manner.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 not violated.

A W A R D

Claim denied.



NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST: *A. W. Paulsen*
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1978.