

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22222

Docket Number CL-22127

Irwin M. Lieberman, Referee

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

PARTIES TO DISPUTE:

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(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8402, that:

"1. The Carrier violated the effective Clerks' Agreement when following an investigation it suspended Clerk Wm. J. Shukitis from service without just cause for a period of forty-five days, commencing on June 9, 1976;

2. The Carrier shall now compensate Mr. Shukitis for all time lost as a result of this suspension from service and shall allow an additional amount as interest equal to one per cent (1%) on all monies due him, compounded monthly, commencing thirty days from the date of suspension and shall clear his record of the charges placed against him."

OPINION OF BOARD: Claimant, following a hearing, was found guilty of conduct unbecoming an employe and was assessed a 45-day disciplinary suspension. The conduct in question was based on his arrest by the Hobart Police Department and being charged with reckless driving, disorderly conduct, resisting arrest and malicious damage to city property.

A number of issues were raised by the parties during the handling of this dispute involving the fact that the incident in question occurred while Claimant was off duty and not on company property during a time when Claimant was already serving a disciplinary suspension for another matter. Without ruling on those issues, we are first concerned herein with the question of whether or not Carrier's decision to discipline Claimant was based on substantial evidence adduced at the investigatory hearing. An examination of the transcript indicates that the only evidence introduced by Carrier at the hearing in support of its ultimate conclusion was a letter from the Chief of Police at Hobart to Carrier's Chief Special Agent, as follows:

"William J. Shukitis was arrested May 31, 1976 at 1:00 a.m. at 3941 Missouri Street, Hobart, Ind. Charges were placed on Mr. Shukitis for Driving Under the Influence, Reckless Driving, Disorderly Conduct, Resisting Arrest, and Destruction of City Property. His court date was set for June 21, 1976 at 6:00 p.m."

It is noted that Claimant was suspended on June 9, 1976, the hearing was held on June 16th and the disciplinary letter was dated June 23rd. During the handling of the dispute on the property, the State of Indiana nolle prossed the charge of Driving Under the Influence, moved to dismiss the charges of disorderly conduct and resisting arrest, and the Claimant pled guilty to malicious trespass and reckless driving.

In Third Division Award 21553, we recently considered a similar case wherein a Carrier based its disciplinary action solely on a criminal charge:

"The evidence adduced at the August 6, 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 Rule G. It is undisputed that the charges against Claimant were subsequently Nolle Prossed when his case was appealed in the Circuit Court of Mobile County.

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....they thereby assumed the consequences that his conviction might eventually be overturned by a higher court.... Someone must bear the consequences of this precipitous action and this Board believes it should be the Carrier, not the Claimant. There is simply no evidence in the record to establish that Claimant was indeed guilty of violating Rule G."

Analogously, in the instant dispute Carrier's suspension of Claimant because of criminal charges which were subsequently nolle prossed was incorrect. Here also there is not a shred of evidence in the record of the investigation which bears on Claimant's conduct to support the finding of conduct unbecoming an employee.

With respect to the charges of malicious trespass and reckless driving to which Claimant pled guilty, we reach a similar conclusion. Aside from the letter from the Police Chief, again there is nothing in the transcript of the investigation bearing on Claimant's demeanor or conduct which could be used to support Carrier's findings. It is also relevant to note that the disposition of the civil proceeding including the modified guilty plea took place some six months after Carrier's action in disciplining Claimant.

The principal issue in this dispute, without examining a series of ancillary problems, is whether there was sufficient evidence to support Carrier's findings of guilt. It is evident that there was not. While Carrier is correct in arguing that disciplinary matters under an agreement are separate, distinct and not generally related to criminal or civil actions in the courts, it is still a prime requisite for Carrier to support its case against an employe with substantial evidence in order to prevail in reviews by Boards such as this. In the case at hand Carrier clearly failed to produce such evidence and consequently the Claim must be sustained. The compensation paid will be in accordance with Rule 32 of the Agreement. Interest will not be allowed.

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 Employee involved in this dispute are respectively Carrier and Employee 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

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That the Agreement was violated.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

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

