

RATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **22935**
Docket Number **MW-23099**

Paul C. Carter, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Seaboard Coast Line Railroad **Company**

STATEMENT OF CLAIM: "Claim of the System **Committee** of the Brotherhood that:

(1) The dismissal of **Trackman M. F. McRae** was improper, unwarranted and an abuse of justice and discretion [System File **C-4(13)-MFM/12-39** (78-20) **J**].

(2) **Trackman M. F. McRae** shall now be allowed the benefits prescribed in the first paragraph of Section 3 of Rule 39."

OPINION OF BOARD: **Claimant** entered Carrier's service Way 7, 1974. At the time of the incident giving rise to the dispute **herein**, he was working as a **trackman** under the **supervision** of Roadmaster C. E. Libby and **Foreman** C. K. Osborne. He **did not** report for duty on November 21, 1977 and on subsequent dates to December 13, 1977. It developed that he had been arrested on charge of petty larceny and possession of **marijuana** on **November 21, 1977**.

On December 21, 1977, the **Roadmaster** wrote the claimant:

"On December 15, 1977, it was reported to me that on November 21, 1977 you had been placed under arrest by Sgt. Ray **Ragsdale** of Avon Park, Fla. Police Department and charged with petty larceny and possession of marijuana. On that **same** date you appeared before County Court Judge Joe **Evers**, Highland County, Avon Park and entered a plea of guilty to both charges. **You** were sentenced to serve 10 days on the charge of petty larceny and 30 days on charge of possession of marijuana.

"Because of your absence without permission from Extra Gang 8700 on November 21, 1977 and the days subsequent thereto and for your arrest and conviction as outlined above, you are hereby charged with violation of Bulletin Notice No. 1 and **the Rule 17-B** of the Agreement between this Railroad and its Maintenance of Way Employees and for violation of those parts of General Rule 18 dealing with dishonesty and uncivil conduct of **the** current Safety Rules for Engineering and Maintenance of Way Employees and for **conduct** unbecoming an employee.

"A hearing will be scheduled by the Division Engineer **and** you will be advised of the **time** and place."

The investigation was scheduled for **December** 28, 1977 **ad was** conducted on that date. **On** January 9, 1978, **the** Division Engineer notified **claimant** of his dismissal from service. A copy of the **transcript** of the investigation has been made a part of the record.

General Rule 18, referred to in the **Roadmaster's** letter of December 21, 1977, reads:

"Disloyalty, dishonesty, desertion, intemperance, **immorality**, vicious or uncivil conduct, insubordination, sleeping **on** duty, incompetency, making false statements, or concealing facts concerning **matters under** investigation, will subject the offender to dismissal."

Rule 17(b) of the applicable collective bargaining **Agreement** reads:

"(b) An employee desiring to be absent from **servicemust** obtain permission **from** his **foreman** or the proper officer. In case an employee is unavoidably kept from work, he **must** be able to furnish proof of his inability to notify **his** foreman or proper officer."

A **review** of the transcript of the investigation shows **that** substantial evidence was presented in support of **the** charges against **claimant**. The Board has previously held that conviction of a crime such as possession of marijuana is sufficient **grounds** for dismissal (**Award** 22383). **Many** awards of this Board have also held that confinement in jail does not constitute unavoidable absence for good cause. See **Awards** 22868, 21228, 12993 and 6572.

It is also noted that claimant's prior record **with** respect to absenteeism was far from satisfactory.

On the record before it, there is no proper basis for the **Board** to interfere **with** the **discipline** imposed by the Carrier.

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 not violated.

A W A R D

Claim denied.

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

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1980.