

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24251  
Docket Number CL-24270

Robert W. McAllister, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,  
Freight **Handlers**, Express and Station Employees  
{ Seaboard Coast Line **Railroad Company**

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-9513)  
that :

1. Carrier acted arbitrarily, capriciously, and in a harsh and discriminatory **manner**, violating Rule **15** and other rules of the **Agreement**, when on September 8, 1980, it dismissed **from** service Truck Operator H. K. Spaulding, and

2. As a consequence, Carrier shall:

A. Reinstate **H. K. Spaulding** to the service, clear his service record of charges set forth in Mr. J. O. Parketon's letter of August 8, 1980, and any reference in connection therewith.

b. Compensate **H. K. Spaulding** for all **time** lost and other benefits' taken **from** him as a result of Carrier's action.

OPINION OF BOARD: Seacoast Transportation Company is a subsidiary of Seaboard Coast Line Railroad Company engaged in trucking. The Claimant, **H. K. Spaulding**, has been employed by the Carrier as a truck operator since June 6, 1965. On July 28, 1980, a Polk County, Florida, Circuit Court Judge sentenced Claimant to ten (10) years probation as a result of his plea of "nolo contendere" to three counts of possession of a controlled substance and one count of possession of drug paraphernalia. On August 1, the Carrier directed Claimant to appear for a formal investigation on August 15, 1980, charging him with violation of Rule 12, conduct unbecoming an employee, and Section 392.4 of the Federal Motor Carrier Safety Regulations dealing with the use and possession of substances which render an employee incapable of safely operating a motor vehicle.

The investigation was held on August 28, 1980, and Claimant was found to be in violation of conduct unbecoming an employee and, thereby, dismissed from service. The Organization argues the Carrier has failed to support its action and, in fact, Claimant never pleaded guilty to the charges and was not adjudged guilty of such charges. The Carrier contends that, while Claimant was off duty at the time of his arrest, the charge of "conduct unbecoming an employee" is well proven from the Claimant's admissions at the investigation and his plea of "nolo contendere".

Notwithstanding both parties contentions over the legal connotation of a plea of "nolo contendere", this Board has reviewed the charges as brought by the Carrier and the record developed at the investigation. That transcript

establishes that the arrest of the Claimant on drug related charges **was** reported by the **Lakeland**, Florida, Ledger, and **Claimant** admitted he **was** the subject described therein. He also admitted the police, empowered by a search warrant, found drug **paraphernalia** in his **home**. Regardless of the nature of his plea, the record clearly shows **Claimant** to have been placed **on** ten years probation.

The charge, "conduct m-becoming an **employee**", encompasses many acts which result in discredit **to the railroad** (Carrier). The **Board's** review of the transcript and the manner in which the **investigation** was conducted fails to establish grounds which would enable us to state Carrier's determination to dismiss the Claimant was not supported by substantial evidence. On the-contrary, we find the **Carrier** had ample justification to find the Claimant **had engaged in** conduct unbecoming **an employee**. The record before us fully supports the Carrier's action.

FINDINGS: The Third Mvision of the Adjustment Board, upon the whole record and sll the **evidence**, finds and holds:

That the parties waived or.1 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.

NATIONAL RAILROAD ADJUSTMENT BOARD

By **Order** of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated **at** Chicago, Illinois, this 23rd day of March 1983.

