

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **24359**
Docket Number **MW-24568**

Paul C. Carter, Referee

PARTIES TO DISPUTE: { Brotherhood of **Maintenance** of Way **Employes**
{ Terminal Railroad Association of St. **Louis**

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

(1) The dismissal of **Foreman** Thomas A. Gray for alleged conduct '**unbecoming** to an **employe**' and for alleged **non-compliance with** 'the conditions and terms set forth **in Chief Engineer J. R. Bowman's** August 1, 1980 letter' was unwarranted, without just and sufficient cause and **on** the basis of **unproven** charges (System File **TRRA** 1981-3).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and ha shall be compensated for all wage loss suffered."

OPINION OF BOARD: **Prior** to the incident giving rise to the dispute herein, Claimant had beer. out of **Carrier's** service for some time. On August 1, 1980, the Carrier's **Chief Engineer** wrote the **following** letter to claimant:

"**This** will confirm our meeting of Wednesday, July 23, 1980, at 10:00 AM with Mr. **Martin Smith**, **Mr. M. C. Bradford**, Dr. **J. Somers**, you and the undersigned present.

As agreed, **you may** return to service on Tuesday, **September 2, 1980 on a** probationary basis for a **period** of six (6) **months** provided you strictly adhere to the following conditions that were specifically outlined during the **course** of the referred to meeting:

1. You will continue to **meet** the **obligations** outlined by the **Madison County** Circuit Court and your **Probationary** Officer.
2. You will continue to actively pursue the AA **Recovery Program** and actively seek the assistance of your AA **Sponsor** and the **professional** service of Dr. **Somers**.
3. You will not violate any rules, **regulations** or orders of the Terminal Railroad Association of **St. Louis**.

On a personal note, Tom, I wish you the best for the future.

Your acceptance and return of the original and first copy of this letter will be appreciated."

The Claimant and the General **Chairman** agreed to the stipulations in the above quoted letter.

On **November 23, 1980**, Claimant was involved in an affair in Collinsville, Illinois, that resulted in his arrest and subsequently pleading guilty to charges of **Criminal** Trespass and Battery on January **8, 1981**, and his being fined **\$90.00** on each charge and sentenced to fifteen week-ends of **work** in the Madison County jail. On March **9, 1981**, the Carrier became aware of the occurrence and **Claimant's** plea of guilty to the charges mentioned. On March 11, **1981**, Claimant was notified:

"A hearing will be held at **1:00 P.M.**, Thursday, March **19, 1981** at the Rearing **Room** in the General Superintendent's office building located at **Northend Westbound Yard**, Madison, Illinois to develop the facts and your responsibility, if any in connection with your conduct **unbecoming** to an employee of the Terminal Railroad **Association** of St. Louis - specifically your plea of guilty and sentencing on January **8, 1981**, for (1) 'Criminal **Tresspass** to Land', and (2) 'Battery' in violation of Rule - **M** of the **TRRA's** General Rules, as amended, and to determine whether or **not you** complied with the conditions and terms set forth in Chief Engineer J. W. Bowman's August 1, **1980** letter permitting **you** to return to work on a **probationary** basis, signed and accepted by you on August **7, 1980**.

Arrange to be present. You **are entitled** to **representation** and witnesses in accordance with Rule **24** of the **current Agreement** between **Terminal Railroad Association** of St. **Louis** and the **Brotherhood** of Maintenance of Way **Employees**."

The hearing was held as scheduled and on April 1. **1981**, **Claimant** was notified of his dismissal **from** the service. A copy of the transcript of the hearing has been made a part of the record.

Carrier's Rule "**M**" of its General Rules **reads**:

"**M** - Employees will not be retained in the service of the **company**, who are careless of the safety of **themselves** or others, insubordinate, dishonest, **immoral, quarrelsome**, or otherwise vicious, failure to **comply** with instructions in whatever form issued or who conduct themselves in a **manner** which should subject the railroad to criticism.

Any act of hostility, misconduct or willful disregard or negligence affecting the interest of the company is sufficient cause for dismissal and must be reported."

The record shows that **Claimant's** six months probationary period began on September 2, **1980**. The acts for which he pled guilty on January **8, 1981**, occurred on November **23, 1980**. The acts, the plea of guilty and the sentencing were within the **six months** probationary period.

In the hearing, or investigation, Claimant contended that the only reason that he pled guilty was that he would not miss any work, and the possibility of losing his job. It **would** seem reasonable that if Claimant was concerned about his job at the **time** of his arrest and prior to the plea of guilty, he would have contacted an officer of the Carrier, especially as he was on probation under the terms of the latter of August 1, **1980**.

Based upon our study of the transcript of the hearing, or investigation, held on March **19, 1981**, we find that substantial evidence was produced by Carrier **in** support of the charge against Claimant. The Board has frequently upheld discipline of **employees** for acts **committed** off duty and for which they are convicted or plead guilty **in** court. See Award **24124**, 22745 and Second Division Award **8050**. In addition, the Carrier has submitted Awards Nos. 252 and **276** of Public Law Board No. **1906**, and Award No. **23** of public **Law** Board No. **2597**, all involving the present Carrier, upholding the disciplining of **employees** for acts **committed** while off duty.

The letter of August 1, **1980**, quoted early **in** this Award, permitting Claimant to return to service on a probationary basis, shows that Carrier has previously attempted remedial action with the **Claimant**.

The claim will be denied.

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.

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 **13th day of May 1983**.