

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24535
Dockete Number CL-24610

Paul C. Carter, Referee

(Brotherhood of Railway, Airline and Steamship Clerks
(Freight Handlers, Express and Station **Employees**
PARTIES TO DISPUTE: {
(Pittsburgh and Lake Erie Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GE-95831 that:

(a) In accordance with Rule 20(d) of the Rules Agreement effective September 1, 1946 as amended, we are appealing the decision of Supt. Labor Relations, **Mr.** R. A. Blair, in his letter dated November 20, 1980, in the discipline case of **Clerk**, Mr. D. W. Coax who was charged with rule "C" of the Pgh. & Lake Erie Railroad General Rules and was dismissed from service.

Rule "C" states: 'To enter or remain in the service, employees must be of good moral character and must conduct themselves at all times, whether on or off Company property, in such manner as not to bring discredit upon the Company.'

(b) Objection was taker: when Carrier had entered the appellants past record into the **investigatin** thus denying him a fair and impartial trial.

(c) That claimant, Mr. D. W. Coax be restored to service with seniority and all other rights unimpaired, and be compensated for all wages, and made whole for any money that he was required to spend for medical and hospital services, or other benefits which would otherwise have **been covered** under the Travelers Group Policy GA-23000 and the **Dental** Plan under the Aetna Insurance Company.

OPINION OF BOARD: Prior to his dismissal from service, Claimant was employed as a clerk in Revenue Accounting in Pittsburgh, Pa., with seniority date of April 9, 1973. On September 12, 1980, he was instructed to attend an investigation, scheduled for September 18, 1980, on the charge:

. . . . concerning your violation of Rule C. of the Pittsburgh & Lake Erie Railroad Company's General Rules when on September 8, 1980, you appeared in Court before Judge J. R. McGregor and plead guilty to the following charges:

1st Count: VIOLATION OF THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT: POSSESSION OF CONTROLLED SUBSTANCE
(Section 13(a) (16)

2nd Count: VIOLATION OF THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT: POSSESSION OF CONTROLLED SUBSTANCE
(Section 13(a) (16)

3rd Count: VIOLATION OF **THE** CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT: POSSESSION OF CONTROLLED SUBSTANCE
(Section 13(a) (30))

4th Count: VIOLATION OF THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT: POSSESSION WITH INTENT TO DELIVER
(Section 13(a) (30))

and placed on probation for a period of five (5) years and fined the sum of \$1,000.00."

The investigation was conducted as scheduled. The Claimant was present and represented. On September 19, 1980, Claimant was notified of his dismissal from the service as a result of having been found guilty of violation of Rule C. Carrier's Rule C, referred to in the letter of charge, reads:

"(T) C. To enter or remain in the service, employees must be of good moral character and must conduct themselves at all times, whether on or off Company property, in such manner as not to bring discredit upon the Company."

Before discussing the merits of the dispute, the Board must consider the Carrier's extensive argument that the claim is improperly before the Board. The Board recognizes that the wording of the claim before the Board is unusual; however, the **Organizatin** has submitted as its exhibit "**D**", copy of letter dated **December** 3, 1980, from Carrier's highest appeals officer to the General Chairman of the Organization, wherein the Carrier described the claim in the same language as referred to the Board by the Organization. **In our** opinion the claim referred to the Board is the claim appealed to Carrier's highest appeals officer. To say the least, the claim has not been enlarged and the Carrier has not been misled. The request of the Carrier that the claim must be dismissed is denied.

As to the merits of the dispute, there was substantial evidence adduced at the investigation, including copies of court records, that Claimant did plead guilty in court to four separate criminal charges involving violation of the Controlled Substance, Drug, Device and Cosmetic Act. Two of the criminal charges covered possession of a controlled substance under Section 13(a) 16 of the Act (a misdemeanor) and the other two charges covered possession with intent to deliver under Section 13(a) 30 of the Act (a felony). The introduction of the court records into the investigation, being a matter of public record, was not improper.

There is no proper basis for the objection to Claimant's prior record being entered into the record. No agreement rule was violated by such action, nor was Claimant prejudiced thereby. This Board has issued numerous awards upholding such procedure. The court indictment is headed "**Commonwealth of Pennsylvania vs. Daniel W. Coax**" and lists the counts outlined in the letter of charge.

Claimant pled guilty to the court charges. Pursuant to plea agreement, sentence was suspended, Claimant was fined \$1,000.00, and placed on probation for a period of five years.

The use of drugs, or the dealing in drugs, is **considered** a serious offense in the railroad industry, usually resulting in dismissal. See Second Division Awards 8205, 8237, Award 8 of Public Law Board No. 1324, and Third Division Awards 24356, 23284, 22530 and 22457.

There is **no** proper basis for the Board to disturb the disciplinary action of the Carrier. The action of the court did not preclude the Carrier from taking disciplinary action.

FINDINGS: The Third Division of the Adjustment, 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 **Carraier** and the **Employes** involved in this dispute are respectively Carrier and **Employes** 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

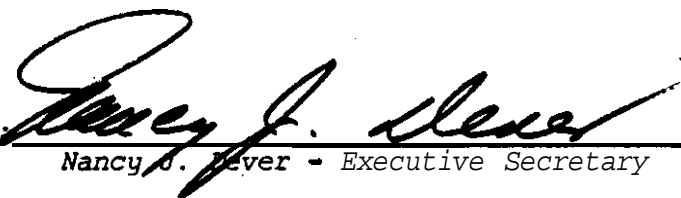
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of October, 1983.