

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24608

**Docket** Number CL-24870

Paul C. Carter. Referee

PARTIES TO DISPUTE: ( (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(**The** Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (**GL-9691**) that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Gallup, New Mexico, when it discharged C. L. **Tolson** as a result of a formal investigation held September 24, 1981, and

(b) Ms. C. L. Tolson shall now be returned to service and paid for all loss of wages and benefits.

OPINION OF BOARD: The record shows that Claimant had been in the service of the Carrier about four years. At the time of the occurrence giving rise to the dispute herein, she was regularly assigned Relief Train Order Clerk at Gallup, New Mexico.

On September 4, 1981, Claimant was arrested at her residence about 6:15 A.M., and booked at the Gallup Department of Public Safety Detention Center on criminal charges of two counts of "Distribution of a Controlled Substance." On September 11, 1981, she was notified by the Carrier to attend formal investigation on September 16, 1981, on the charge:

"You are hereby notified to attend formal investigation at **Trainmaster's** Office, Gallup, New Mexico, 9:00 AM, Wednesday, September 16, 1981, concerning the report that you were arrested by New Mexico law enforcement officers on the morning of September 4, 1981, at Gallup, *New Mexico* and allegedly charged with possession, sale and distribution of controlled substances and narcotics, resulting in alleged adverse publicity which could bring discredit on your fellow **employees** and subject the railroad to criticism or loss of good will, so as to determine the facts and place responsibility, if any, involving possible violation of Rules 2, 4, 14, and 16. General Rules for **the** Guidance of **Employees**, effective January 1, 1978.

You may arrange for representation in line with the provisions of Agreement or Schedule governing your working conditions and you may likewise arrange for the attendance of any desired witnesses.

Please acknowledge receipt and understanding on attached copy and return to the undersigned."

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The charge was issued over the name of the Superintendent.

The investigation was conducted on September 24, 1981, following which Claimant was dismissed from the service.

Carrier's General Rules 2, 4, 14 and 16, referred to in the letter of charge, read:

- '2. Employees must be conversant with and obey the Company's rules and special instructions. If an employee is in doubt, or does not know the meaning of any rule or instruction, he should promptly ask his supervisor for an explanation. A copy of Form 2626 Std. is furnished each **employee** to be retained by him for his guidance.
4. Employees are required to report rule violations promptly to the proper authority.
14. Employees must obey instructions from the proper authority in matters pertaining to their respective branches of the service. They must not withhold information, or fail to give all the facts, regarding irregularities, accidents, personal injuries or rule violations.
16. **Employees** must not be careless of the safety of themselves, or others; they must remain alert and attentive and plan their work to avoid injury.

Employees must not be indifferent to duty, insubordinate, dishonest, immoral, quarrelsome or vicious.

Employees must conduct themselves in a manner that will not bring discredit to their fellow **employees** or subject the company to criticism or loss of good **will**."

In the investigation there was no question of Claimant having been arrested and booked on the criminal charges, which the Carrier contends resulted in adverse publicity which created discredit on fellow employees and subjected the Carrier to criticism and/or loss of good will. In the investigation **substantial** evidence was introduced concerning the publicity given to Claimant's arrest by newspapers in the area. In the investigation four newspaper articles were introduced which bore headlines:

"**Railroad Employees** arrested for Drug Trafficking..."

"Charges dismissed against railroaders..."

"7 arraigned on drug charges..."

"Police **Derail** Area Railroad **Dope** Ring..."

It is conclusively shown that the arrest of **Claimant** and seven other railroad employees on drug charges was \*front **page** news in the area.

In our opinion the Carrier was justified in its conclusion that the publicity given the case had an adverse effect upon the Carrier and other employees and that discipline was justified.

Considering all the circumstances, the discipline imposed by the Carrier was not arbitrary, capricious or in bad faith. The use of drugs, or the dealing in drugs, is considered a serious offense in the railroad industry, usually resulting in dismissal. The fact that criminal charges against Claimant were not pursued by civil authorities had no effect on the Carrier's right to discipline. The Carrier's right to discipline an employee is unrelated to the action of criminal or civil courts. See Awards Nos. 12322, 13116, 13127, 19929, 20781.

The record shows that six other employees involved in the same drug episode were later offered leniency reinstatement and accepted the offer. Claimant was also offered leniency reinstatement but rejected the offer. Leniency is a matter between the **employee** and the Carrier. It addresses itself to the Carrier and not to the Board.

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 **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

That the Agreement was not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever, Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1984.

