

301P
NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24994
Docket Number CL-25113

Paul C. Carter, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE:

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(Illinois Central Gulf Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9727)
that:

1. Company violated the agreement between the parties when, on March 26, 1982, Company discharged Clerk Edward Snell, Tuscaloosa, Alabama, from service of the Company for alleged violation of paragraph H of Superintendent's Bulletin dated January 1, 1982.

2. Company shall now be required to reinstate Clerk Edward Snell and allow him the amount of \$78.93 per day, commencing March 26, 1982, and continuing five days per week thereafter, until Claimant is returned to service and his record cleared of the investigation held March 23, 1982.

OPINION OF BOARD: The record shows that on March 9, 1982, the Claimant pled guilty in Circuit Court, Tuscaloosa County, Alabama, to the charge of sexual abuse in the first degree, a felony. The Carrier states that the victim was Claimant's six year old daughter.

On March 23, 1982, after postponement, a formal investigation was conducted in accordance with the applicable Agreement. In the investigation Claimant admitted that he had pled guilty to the felony charge. Claimant was represented in the investigation by the District Chairman of the Organization. A copy of the transcript of the investigation has been made a part of the record. In the investigation, the only objection raised was that the notice of charge, issued on March 16, 1982, cited no rule or rules as having been violated. The Board has issued numerous awards that specific rules need not be cited in the notice of investigation, but such notice should contain definite information concerning the incident subject to investigation so that the accused or his representative may prepare a defense. The charge herein met the Agreement requirement. Further, this objection does not seem to have been pursued by the Organization.

The record shows that at the time Claimant pled guilty in court, he was sentenced to one year and one day, and placed on probation. The Carrier contends that Claimant was in violation of Paragraph H of Superintendent's Notice dated January 1, 1982, which reads:

"Dishonesty, desertion from duty, insubordination, willful neglect, gross carelessness, making false reports or statements, concealing facts concerning matters under investigation, immoral character or serious violations of the law, are prohibited."

In the Organization's submission it contends that as Claimant was arrested for the alleged offense on February 23, 1981, the January 1, 1982 rule was not effective. The Carrier counters that Rule H was in the General Rules for 1981 and 1982, and actually existed in written fashion for many years prior to 1981.

The Organization contends vigorously that the Carrier may not properly dismiss an employee for off-duty conduct unless such conduct is shown to have harmed the Company's reputation. The Carrier contends that acts such as the one here adversely affects the employee-employer relationship.

Numerous awards have been issued by the different Divisions of the Board involving off-duty offenses. In Third Division Award No. 21825 it was held:

"Many awards of this Board have held that a Claimant may be disciplined for conduct occurring while he is, in fact, off duty. See Third Division Awards No. 19263, 21228, and 21334 as examples.

* * *

...Black's law Dictionary, Fourth Edition, defines 'moral turpitude' as, 'An act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. Trades & General Insurance Co. v. Russell, 99 S.W.2d 1079, 1087.', and "Conduct contrary to justice, honesty, modesty, or good morals. Marsh v. State Bar of California, 291 P. 583, 584.'" (Emphasis in original.)

See also Award 11796, and others cited therein, Second Division Awards 4689, 2204, and Fourth Division Award 2127.

Many awards have been cited by the Organization in support of its position. The awards cited by the Organization were, without doubt, based upon the judgment of the neutrals involved and the facts in each case.

The Board does consider cases involving moral turpitude as very serious. We agree with the findings in Award No. 11, Public Law Board No. 3096, involving the same parties as involved herein, where it was held:

"The Board finds that it is a troublesome question as to where there is a dichotomy between an employee's on-duty conduct as being in contradistinction to conduct unrelated to Company employment.

The Board finds that the answer has to be based on the offense itself. While an employee is entitled to a personal life, aside and away from her life as an employee, it is also true that no employee has an absolute vested right to a job. An employee has to earn the right to remain an employee, especially if the employer is a public corporation, prominent in the community. The employee earns this right to remain an employee, not only by rendering good and faithful service, but also by their conduct and deportment, showing that they are responsible employees of a responsible Company. The Board finds that an employee's private and personal non-company conduct, important as it be, does not immunize her from the consequences of her conduct."

The offense in our present case was sufficiently reprehensible to justify the Carrier in taking the action that it did. The Claimant was guilty of aberrant and criminal behavior. The Carrier is not required to continue such an individual in its service. 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; 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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.

