

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25803
Docket Number TD-25989

Paul C. Carter, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM:

"Request that the notice of charges dated January 27, 1983 be removed from Appellant Train Dispatcher W. G. Thomas' employment record, that the dismissal notice dated February 17, 1983 be rescinded and that he be offered reinstatement to his position as Train Dispatcher with seniority and all other rights unimpaired upon his release from incarceration resulting from the guilty plea referred to in said January 27, 1983 notice."

OPINION OF BOARD: The record shows that Claimant had a Company seniority date of March 26, 1968, and Dispatcher's seniority date of August 31, 1974. The Carrier contends that it became aware on January 22, 1983, when it was able to obtain a certified copy of the Plea in the matter of the State of Illinois vs. William G. Thomas, 82-CF-504, that the Claimant had plead guilty to a charge of Burglary and Armed Violence before the Circuit Court, Twentieth Judicial Circuit of Illinois, St. Clair County. On January 27, 1983, Carrier's Trainmaster addressed the following letter, certified mail, to Claimant at his home address:

"An investigation will be held in the Conference Room, General Superintendent's Office, N.E.W.B. Yard, Madison, Illinois at 9:00 A.M., Wednesday, February 2, 1983, to develop the facts, discover the cause and determine your responsibility, if any, in connection with your pleading guilty to a charge of the crime of Burglary and Armed Violence, dated January 21, 1983, in the Circuit Court, Twentieth Judicial Circuit of Illinois, St. Clair County; in alleged violation of Rule (m) of T.R.R.A. Operating Rules, effective May 1, 1975, as amended by General Order No. 1, Item No. 6, effective 12:01 A.M., January 1, 1983; and to determine if any Operating Rules, Safety Rules or Special Instructions were violated in connection therewith.

"Arrange to attend this investigation. You are entitled to representation and witnesses, if you so desire, as provided for in your agreement.

"NOTE: It is your responsibility to arrange for your representation to be present at the appointed time and date."

On January 31, 1983, the General Chairman of the Organization (the A.T.D.A.) wrote the Trainmaster in part:

"Although I have been unable to contact Mr. Thomas since receiving your notice, it is my understanding that he is confined in the St. Clair County Jail at Belleville, Illinois and will not be released in time to attend the investigation referred (sic) to in your notice.

"This is to therefore request an initial postponement of (30) thirty days in order to allow time for an Organization representative to contact Mr. Thomas and ascertain his desires as to being represented. Please advise."

The investigation was initially postponed to February 9, 1983. It was again postponed at the request of the Vice President of the A.T.D.A. and rescheduled for February 16, 1983.

The record shows that Claimant was originally charged by the State with Murder, but as a result of plea bargaining the Murder charge was dismissed and Claimant was charged with Burglary and Armed Violence, to which Claimant pled guilty. The Claimant was subsequently sentenced to imprisonment for six years on each count, to run concurrently. The criminal proceedings against Claimant resulted from what the Organization describes as "a serious family matter which resulted in his half-brother shooting his step-father to death."

Rule (m) of Carrier's Operating Rules, as referred to in the Trainmaster's letter of January 27, 1983, reads:

"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 that will 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."

In the investigation conducted on February 16, 1983, Claimant was not present. He was represented by the General Chairman and a Vice President of the A.T.D.A. The General Chairman stated at the beginning of the investigation that Claimant was incarcerated in the St. Clair County Jail. There was admitted into the investigation a copy of a letter addressed to the General Chairman by the Claimant. In that letter the Claimant proclaimed his innocence; denied that he actually committed the crime of Burglary and Armed Violence, but that he pled guilty in an effort to avoid life imprisonment for his half-brother and the possible involvement of his wife and mother in the criminal proceedings.

Following the investigation, Claimant was notified on February 17, 1983, of his dismissal from service.

Notwithstanding the statement of the Claimant in his letter to the General Chairman, we must accept the Court record. The fact remains that Claimant did plead guilty to the criminal charges of Burglary and Armed Violence. This, in itself, showed a definite violation of Carrier's Rule (m) heretofore quoted. In Third Division Award No. 21949 it was held:

"The conviction itself occurred while the Claimant was employed by the Carrier. Although Claimant's testimony as to what occurred would appear to shed a sympathetic light on his role, the Carrier properly could rely on the actual Court record and the Claimant's guilty plea."

We do not agree with the contention advanced that Carrier's Rule (m) applies only to on-duty conduct. The Board has long held that conduct off the Carrier's property, while off duty, may be grounds for discipline. See Second Division Award No. 8050, and Third Division Awards No. 23836, 24994 and 24359.

We do not consider the fact that the investigation was conducted in the absence of the Claimant, under the circumstances involved, to be in violation of the Agreement or as depriving the Claimant of any Agreement rights. Certainly the Carrier could not reasonably be expected to postpone the investigation until Claimant's release from prison.

Based upon the entire record, the Board finds no proper basis for interfering with the discipline imposed by the Carrier.

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 Employee 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

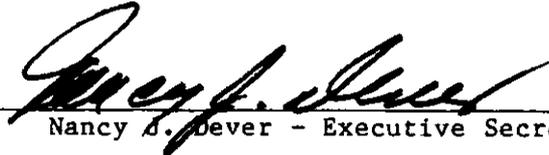
That the Agreement was not violated.

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 12th day of December 1985.