

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26017
Docket Number TD-26171

Philip Harris, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(Southern Pacific Transportation Company

STATEMENT OF CLAIM:

"We ask that the discipline (dismissal) assessed as a result of hearing held July 21, 1983 be withdrawn from Mr. Feelers record and that he be reinstated as a Train Dispatcher, and compensated for all time lost."

OPINION OF BOARD: The Claimant, an employe of the Carrier since June, 1970, appeared in a Eugene, Oregon, Circuit Court on June 3, 1983, with his Attorney and pleaded guilty to raping his juvenile step-daughter. The Carrier conducted a Hearing on July 21, 1983, and dismissed him for the offense on July 29, 1983. The Court sentenced him on September 9, 1983, to twenty years in jail, of which ten years must be served before parole may be considered.

The Carrier bases its disciplinary action on Rule 801:

"Employees will not be retained in the service who are careless of the safety of themselves or others, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who conduct themselves in a manner which would subject the railroad to criticism.

Any act of hostility, misconduct or negligence affecting the interests of the Company is sufficient cause for dismissal and must be reported." (Emphasis supplied)

The Claimant avers that his offense is not connected with his employment relationship with the Carrier as a Train Dispatcher. Also, there was no adverse publicity emanating from his guilty plea. In addition, he had been undergoing counseling in the Carrier's Employee Assistance Program, and should not be further punished for being mentally ill.

Numerous Awards exist on both sides of the question concerning the purview of Carriers over off-duty, off-premises behavior. This Board's conclusion is that a sufficient nexus exists to justify the Carrier's action. First, there is the deed itself which caused a severe punishment to be imposed by the Court. An act of moral turpitude was committed, defined in Black's Dictionary, Fourth Edition, as "An act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." The Carrier is not arbitrary in considering the offense as immoral.

Since the deed itself provides sufficient cause to uphold the penalty of dismissal from the Carrier's service, it is unnecessary to address the question whether Claimant's conduct would subject the Railroad to criticism. As for Claimant's plea that his participation in the Carrier's Employee Assistance Program should relieve him of further punishment, this fact does not guarantee him a lifetime job.

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. Nevers - Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1986.

