Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 28843
THIRD DIVISION Docket No. MS-29397
91-3-90-3-297

The Third Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

PARTIES TO DISPUTE: (Richard A. Mosca
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(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"CONDUCT UNBECOMING AN EMPLOYEE
I maintain that I was deceived and misrepresented by the New Jersey Public Defender's Office and I am totally innocent of the charge. I am reopening the entire matter with my attorney and believe I should be reinstated in all capacities and given the benefit of the doubt while I fight to overturn this injustice."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On March 18, 1988, Claimant, a Crew Dispatcher with a February 4, 1976 seniority date pleaded guilty to "Distribution of Controlled Dangerous Substance (Marijuana)" in the Mercer County Court in Trenton, N.J. On June 13, 1988, the Carrier not only became aware of the Claimant's guilty plea, but of an Article in the Trentonian newspaper which identified the Claimant as a Conrail employee.

As a result of the circumstances, the Carrier advised the Claimant on June 30, 1988, to attend an investigation originally scheduled for July 1, 1988. The Claimant was charged with:

"Conduct unbecoming an employee of the Consolidated Rail Corporation in that you pleaded guilty on June 3, 1988 to distributing a controlled substance.

This stems from an article in the Trentonian Newspaper on March 19, 1988 which named three (3) Conrail Employees as Co-Conspirators."

After one postponement, the Investigation was held on July 14, 1988. Following the hearing, the Claimant was "Dismissed in All Capacities."

The discipline was appealed in normal progression up through the Senior Director of Labor Relations.

Subsequently, the Organization asked for and was granted an extension of time in order to list this Case with the Board.

Any employer is entitled to protect its reputation with its clients. This becomes even more compelling when the employer is a service industry dependent on the trust of its customers. If there is any doubt the Carrier conducts its operations safely and with integrity, customers are likely to be reluctant to give their business to the company.

Even if the Claimant's contentions are given credence, the Board cannot find fault with the Carrier's actions. Once the Claimant admitted guilt to a felony and it was reported in the newspaper, along with the fact he was a Conrail Employee, the Carrier, without choice, became involved in the incident. If they had done nothing, their reputation would have been tainted.

It is generally established that Carriers cannot use off-duty conduct as a reason to discipline employees unless there is a clear nexus between the employee's behavior and his employment. In the present case, the Board believes the admitted guilt of the Claimant and the newspaper article which advertised his employment with the Carrier establishes the nexus.

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 25th day of June 1991.