

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29971
Docket No. MW-30065
93-3-91-3-478

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation, Inc. (former Louisville
(and Nashville Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the
Brotherhood that:

- (1) The dismissal of Mr. C. E. Leggett for alleged conduct unbecoming an employe of CSX Transportation in connection with a plea of guilty to misdemeanor possession of the Schedule II controlled substance on November 9, 1990 was arbitrary, capricious and without just and sufficient cause [System File 9(14)(91)/12(91-87) LNR].
- (2) As a consequence of the violation set forth in Part (1) hereof, the Claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

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 employe 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.

Claimant had been a Track Repairman who had been in Carrier's service for approximately sixteen years. In April 1990, while off duty, Claimant was arrested and charged with unlawful possession of

a controlled substance (cocaine base). A Grand Jury of appropriate jurisdiction subsequently entered an indictment against Claimant for unlawful possession of a controlled substance "with the intent to sell and deliver". When the case came for trial, Claimant, on the advice of and with the assistance of his attorney, entered a plea of guilty to misdemeanor possession of a Schedule II controlled substance with the understanding that Claimant would participate in the State's "Post Trial Diversion Project" which provided, in general, that his case would be continued for a one-year period after which, if he had followed and completed all of the terms of the probation, his court record could be expunged.

Upon learning of Claimant's guilty plea, Carrier immediately withheld him from service and ordered him to appear for an Investigation on the charge of conduct unbecoming an employee and possible violation of CSX Operating and General Rules dealing with the illegal possession of drugs. The Investigation was held as scheduled at which time Claimant was present, represented and testified on his own behalf. Following the conclusion of the Investigation, Claimant was timely notified that he had been found guilty of the charges and was dismissed from Carrier's service. Appeals on Claimant's behalf were initiated and progressed through the normal on-property grievance procedures and the dispute is now properly before this Board.

The Organization, in its handling of the appeal on behalf of Claimant and in its presentation of the case to this Board, argued from several positions. It contends that although Claimant pled guilty, there is nothing in the record to prove that he was in "possession" of the illegal substance. It says that Claimant was unaware of the technical and employment threatening aspects of the plea bargain; that Carrier failed to consider Claimant's long service record; that the Carrier experienced no harm from Claimant's arrest and guilty plea; that discipline by dismissal was excessive and punitive and should not stand; that although Claimant pled guilty to the court charge, his conduct was not unbecoming that of a CSX employee and that there is precedent for reinstatement even though the charges involve drugs. In support of these arguments and contentions, the Organization cited 31 Awards of this and other Section 3 Boards, including Third Division Award 28449 which was authored by this Referee.

For its part, the Carrier argued that the record supports the charges; that Claimant's plea of guilty removes any argument relative to the probity of the evidence and that the penalty imposed was neither arbitrary, capricious nor an abuse of managerial discretion.

We have thoroughly reviewed the entire case file as developed during the progression of this case. We have read and studied each of the several citations of authority which have been submitted in support of the several arguments. There are no procedural arguments advanced in this case. There is admission by Claimant that it was his automobile and his friends who were involved in the arrest and the search and it was his attorney who developed and prepared his guilty plea to the court. This Board is convinced from the case record that the Claimant is and must be responsible for his own actions. His guilty plea as entered to the court was an act of his own choice and for which he must bear responsibility. The term "possession" as used in disciplinary matters has been met in the circumstances which were admitted to in this case. Support for this conclusion can be found in the conclusions reached by Third Division Award 24818 as well as Award 10 of Special Board of Adjustment No. 924. In short, the Carrier met its burden of proof by substantial evidence in support of the charges as made.

As for the contention that the guilty plea as entered by Claimant's attorney on his behalf was somehow misunderstood and the possible adverse effect on his employment was not known simply is not convincing. Claimant's own testimony at the Investigation gives clear insight into his knowledge of circumstances such as these. In regards to one of his friends, Claimant candidly testified that Hill "...was intoxicated and he pleaded not guilty in the case. If he had pleaded guilty he would have lost his job". (Emphasis added) If Claimant knew this to be a certainty for Hill, why would he think otherwise for himself? This Board is convinced from this record that he was fully aware of what he was doing when he entered his guilty plea.

The record contains many of the same characteristics as were involved in Award 3 of Public Law Board No. 2998 in which we read:

"The Organization's contentions relative to the First Offender Law of the State in question are found to be unpersuasive by the Board. In this respect this Board cites with favor the decision rendered in Award No. 1 of this same Public Law Board where it is stated:

'...(t)he fact that under the First Offender Law the court stayed the adjudication of the Claimant's guilt and withheld the imposition of sentence pending probation does not alter the fact that the Claimant first admitted wrongdoing in the form of a guilty plea. The Carrier's discharge action is not dependent on the court's final adjudication of the case. The Claimant's admission is sufficient under

the applicable burden of proof in the contractual action to support a finding of guilt'."

Equally applicable in this case is the sound logic expressed in Fourth Division Award 4647, to wit:

"Claimant admitted in his investigation, that a plea of guilty was entered on his behalf. This plea resulted from negotiations between the State and Claimant through his Attorney. Such pleas, made in open court, ought not be allowed to be repudiated in a subsequent railroad disciplinary investigation on the basis of a misconceived notion that the charged employee never personally testified in open court or otherwise admitted to any culpability in the matter. Nor should such pleas be dismissed as expedient alternatives to avoid potential long term incarcerations for felonious conduct. We know of no rule, or other prohibition, barring their consideration as evidence as to the truth of the matter under investigation in railroad discipline cases."

On the basis of the relative convincing force of testimony and evidence as found in this case, the Claim cannot be sustained. Carrier's actions were appropriate under the circumstances and this Board will not disturb them.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of December 1993.