

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32262
Docket No. TD-32209
97-3-95-3-2

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(American Train Dispatchers Department/International
(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

"The American Train Dispatchers Department cannot accept Mr. Van Houden's decision to dismiss dispatcher R. D. Burt. The Carrier has failed to prove that Mr. Burt violated General Rule L and Rule 607 of the General Code of operating rules while employed by the Carrier.

While on duty and employed in the service of the Burlington Northern Railroad Co., Mr. Burt complied with all rules required of him. His conduct while away from the property has nothing to do with his on duty performance.

It is the position of the American Train Dispatchers Department that Mr. Burt has been dismissed without proper cause. The Carrier shall now reinstate Mr. Burt and compensate for all time lost due to his dismissal."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

Claimant was employed by Carrier as a Train Dispatcher at Alliance, Nebraska. On June 8, 1993, he entered a plea of guilty to a charge of sexual assault on a child under the age of fourteen, a Class IV felony. The victim of this assault was Claimant's physically and mentally handicapped daughter. On June 13, 1993, Claimant was sentenced to 12-24 months in prison for this crime. Both Claimant's conviction and sentence were reported in the Alliance *Times Herald*.

Following Claimant's conviction, Carrier directed him to attend an Investigation at which he was charged with "your alleged failure to conduct yourself in such a manner that Burlington Northern Railroad would not be subjected to criticism and loss of good will, with your plea of guilty to sexual assault on a child under 14 in Box Butte District Court on June 8, 1993, while employed as train dispatcher for Burlington Northern Railroad at Alliance, Nebraska." The Investigation was conducted on June 23, 1993, at which time Claimant admitted that he had pled guilty to the charge. Subsequent to the investigation, Claimant was dismissed from service effective July 13, 1993.

The Organization argues that Claimant's crime was committed off duty and has no bearing on his work conduct. It asserts Carrier has failed to produce any evidence it has suffered criticism or loss of good will as a result of Claimant's actions. The Organization denies there is any relationship between Claimant's conduct and his employment status or that his conduct has adversely impacted the Carrier's reputation in the community.

The instant case is identical to Third Division Award 24994, which involved a clerk who pled guilty to sexual abuse in the first degree, a felony. In that case as well, the victim was the employee's daughter. In upholding the employee's dismissal, the Board quoted from Award 11, Public Law Board No. 3096, 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 Board then held:

"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."

The Board finds no basis for any different conclusion in this case. (See Second Division Award 13072 and Third Division Awards 26017 and 28705.) Accordingly, the claim will be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 7th day of October 1997.