

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32305
Docket No. SG-32882
97-3-96-3-227**

The Third Division consisted of the regular members and in addition Referee Jonathan S. Liebowitz when award was rendered.

PARTIES TO DISPUTE: (**Brotherhood of Railroad Signalmen**
(**CSX Transportation, Inc. (former Louisville &**
(**Nashville Railroad Company)**

STATEMENT OF CLAIM:

“Claim on behalf of M.S. Thomas for reinstatement to service with seniority unimpaired, with compensation for all time and benefits lost in connection with his dismissal from service and with the discipline removed from his record, account Carrier violated the current Signalmen's Agreement, particularly Rule 55, when it failed to provide the Claimant with a fair and impartial investigation, did not make the charge against the Claimant within ten days of the date it had knowledge of the alleged offense and imposed harsh and excessive discipline in connection with an investigation conducted on April 27, 1995. Carrier's File No. 15 (95-189). General Chairman's File No. 95-176-INV-07. BRS File Case No. 9691-L&N.”

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.

This case is on appeal of the dismissal of the Claimant, a former Signal Maintainer, on May 26, 1995, following an Investigation held on April 27, 1995. On April 10, 1995, Special Agent L. A. Maggard learned that Claimant had appeared in Oldham County, Kentucky, District Court on April 6 on an arrest and charge of felony theft and misdemeanor theft by unlawful taking. In Court, the felony charge was dropped and Claimant entered a plea of guilty to the charge of misdemeanor theft for which he was ordered to make restitution and perform community service. Special Agent Maggard notified Signal Supervisor D. E. Boatright of the disposition of the case on April 10, 1995.

The Organization maintains that the Carrier failed to make the charge against the Claimant within ten days of the date it had knowledge of the alleged offense. Claimant was dismissed for conduct unbecoming an employee when he pled guilty to stealing money from the LaGrange Elementary School Parent-Teacher Association, of which he was President.

The pertinent charge reads:

"You [are] charged with conduct unbecoming an employee in that you appeared in Oldham County District Court on Thursday, April 6, 1995, and entered a guilty plea to theft by unlawful taking, for which offense you were ordered by the Court to pay a total of \$450.00 in restitution and also ordered into community service."

Claimant was also charged with being absent from assignment without permission from proper authority and claiming time and wages for time not worked on February 23 and April 6, 1995, but those charges were dropped and Claimant was discharged for the conduct unbecoming an employee in relation to the guilty plea to theft.

The evidence shows that the Carrier first became aware of the subject matter of the charge (the guilty plea to theft by unlawful taking) on April 10, 1995. The Notice of Investigation is dated April 18, within the ten days specified in Rule 55. Therefore, that was within ten days of the date the Carrier had knowledge of the alleged offense and the Organization's claim of untimeliness has not been substantiated.

But the precedents show that in regard to such a charge, the offense of dismissal from service may only be upheld where there is a demonstration that the Claimant's conduct had an adverse effect upon the Carrier.

In Third Division Award 30554, the Board held that:

"The record clearly establishes claimant's violations of criminal law. However, the record is also clear that the conduct occurred while claimant was off duty and away from the workplace. It is well-established that the Carrier's right to discipline employees for off-duty conduct is dependent on the establishment of a connection between the conduct and the employer's interest. In the instant case, there is no evidence that the Carrier suffered adverse publicity, loss of business or other damage as a result of the offense. There is no indication that the nature of the offense was likely to cause other employees, customers or members of the public to refuse to deal with the claimant."

The Third Division also held in Award 20874 (in pertinent part):

"The correct standard is that an employee's off-duty misconduct may be the subject of employer discipline where that conduct was found to be related to his employment or was found to have an actual or reasonably foreseeable adverse effect upon the business. The connection between the facts which occur and the extent to which the business is affected must be reasonable and discernible. It must be such as could logically be expected to cause some result in the employer's affairs. In this latter connection mere speculation as to adverse effect upon the business will not suffice...."

In accord is First Division Award 24258.

Also in accord is Third Division Award 21293, holding that in a case of off-duty improper acts, in order to justify disciplinary action, including discharge, there must be some evidence of damage to the Carrier.

In this case, the Board finds in the record an absence of direct evidence which would demonstrate an adverse effect upon the Carrier, its operations, or its relations to its customers and employees arising from the Claimant's misconduct. There is no demonstration of a direct connection between the Claimant's employment relationship

and his arrest and guilty plea, or of damaging publicity or effect on Claimant's ability to do his job. Claimant had some 20 years of service. The Carrier asserts prior discipline in 1982 in that Claimant was disciplined for unauthorized possession of Company material for which he received a 25-day actual suspension without pay on September 8, 1982. The Organization states that there is no indication in the record of any previous discipline or of the Carrier's assertion that "The Board need only consider that the act of theft from a public school PTA by its president was conduct unbecoming anyone which surely brought unfavorable publicity to CSXT in a small town the size of LaGrange."

Clear Board precedent establishes that we may proceed as an appellate body only on the record made on the property. But Claimant's misconduct must have had some connection with the Carrier in a small community, as alluded to in the Organization's June 5, 1995 letter addressed to the Carrier.

In view of all of the above points, the Claimant should be permitted to return to work with the Carrier with seniority unimpaired, but without backpay. His continued employment will be conditioned upon his maintaining a good employment record.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of November 1997.