

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21499
Docket Number CL-21460

David C. Randles, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8092) that:

1. Carrier violated the Clerks' Rules Agreement, which became effective March 1, 1973, when it dismissed Mr. C. C. Duniphan from its service as a result of investigation held Friday, February 15, 1974.

2. Carrier's action was unjust, arbitrary and an abuse of discretion.

3. Carrier shall now be required to compensate Mr. Duniphan for all time lost beginning February 6, 1974, and continuing until he is returned to Carrier's service.

OPINION OF BOARD: Claimant was dismissed from Carrier's service for violating that part of Carrier's Rule "P" which states, "the arrest of an employee by proper police or legal authority with resultant filing of charges . . . is sufficient cause for discipline." Claimant was admittedly arrested, as well as indicted, but the indictment was subsequently dismissed by the court, and the ultimate question before this Board is whether Carrier's rule authorizing discipline solely on the basis of the arrest and indictment is arbitrary.

Recent Second Division Award 7130 (Twomey) involved this identical Carrier rule as well as practically identical facts, and the claim therein was sustained on the basis of the following ruling:

". . . The initial question for us is whether the applied portion of Company Rule 'P', 'the arrest of an employee by proper police or legal authority with resultant filing of charges...is sufficient cause for discipline,' is a reasonable rule? We find that it is not. We find such a rule, as applied in the instant case, to be manifestly unreasonable. Certainly the Carrier has the right to establish reasonable operating rules, but to have a rule that subjects an

"employee to discipline—the ultimate discipline of dismissal—on the sole basis of the employee having been arrested and charged with a crime, is contrary to reason and fundamental fairness. It is a harsh fact of life in our society that innocent persons may be erroneously arrested and charged with a crime, only to be later fully exonerated . . ."

We concur in this ruling and sustain the instant claim.

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 violated.

A W A R D

The Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1977.