

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21553
Docket Number MW-21507

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Louisville and Nashville Railroad Company

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

(1) The dismissal of Track Repairman Robert Allen Dunn on July 24, 1974 was without just and sufficient cause and in abuse of the Carrier's discretion [System File 1-17 (26)/D-105553 E-306-147].

(2) The Carrier shall now pay Claimant Dunn for all time lost from the date of his dismissal (7-24-74) to the date of his reinstatement and return to service on February 24, 1975.

OPINION OF BOARD: On June 29, 1974, the Claimant, accompanied by two friends, was arrested by the Mobile, Alabama Police Department and charged with "Possession of Marijuana for Personal Use" and "Possession of Narcotic Paraphernalia". On July 24, 1974, Claimant was convicted of the foregoing charges in the Mobile, Alabama City Municipal Court. Carrier conducted an investigation on August 9, 1974 charging Claimant with violation of General Rule G of the Rules and Instructions of the Maintenance of Way Department as a result of his conviction in the City Municipal Court. Claimant was found guilty as charged and dismissed from service effective July 24, 1974. Claimant had appealed his conviction in the City Municipal Court and on November 7, 1974 both charges were Nolle Prossed on motion of the Assistant District Attorney. When Carrier was apprised of this they offered to reinstate Claimant to service on a leniency basis but without pay for time lost. Claimant refused, however. Claimant did return to service on February 24, 1975 and he is herein claiming pay for all time lost as a result of his dismissal on July 24, 1974.

The evidence adduced at the August 9, 1974 investigation reveals that Claimant was dismissed from service solely as a result of his conviction in the Mobile City Municipal Court on the charge of possession of marijuana for personal use and possession of narcotic paraphernalia. No evidence, other than his conviction, was introduced to substantiate the allegation that Claimant had violated General Rule G. It is undisputed that the charges against Claimant were subsequently Nolle Prossed when his case was appealed to the Circuit Court of Mobile County.

7 { It is the considered opinion of this Board that when Carrier elected to dismiss Claimant from service solely based on his conviction in Municipal Court, with full knowledge that Claimant had appealed his conviction to a higher court, they thereby assumed the consequences that his conviction might eventually be overturned by a higher court. In fact, Claimant's charges were subsequently Nolle Prossed. [It matters not that Carrier acted in good faith when they dismissed Claimant effective July 24, 1974. Someone must bear the consequences of this precipitous action and this Board believes it should be the Carrier, not the Claimant. There is simply no evidence in the record to establish that Claimant was indeed guilty of violating General Rule G. Accordingly, he must be restored to service and paid for all time lost consistent with Rule 27 (b).

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 Employee involved in this dispute are respectively Carrier and Employee 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

Claim sustained. Claimant to be compensated as required by Rule 27 (b).

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1977.