

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21761
Docket Number CL-21891

George S. Roukis, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees

PARTIES TO DISPUTE:

(
(Chicago, Milwaukee, St. Paul and Pacific
(Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8269, that:

1) Carrier violated the Clerks' Agreement at Milwaukee, Wis. when it failed to charge Employee G. Pfister within fifteen (15) days of the date his supervising officer had knowledge of an alleged offense.

2) Carrier violated the Clerks' Agreement when it held an investigation after failing to comply with the time limits in connection with the charge made against Employee Pfister.

3) Carrier acted arbitrarily, capriciously and in violation of the Agreement when, after failing to comply with the time limits and holding investigation, it dismissed Employee Pfister without proving its untimely charge.

4) Carrier shall now be required to restore Employee G. Pfister to service with all rights and privileges unimpaired, and pay him for all time lost from the date of his dismissal to the date of his reinstatement.

OPINION OF BOARD: Claimant was arrested on June 19, 1975, by officers of the Milwaukee Police Department. He was charged with possession of LSD, cocaine and amphetamines with intent to deliver. The Court set bail on June 20, 1975, at \$5,000 and a property bond was posted to that amount on June 21, 1975. On June 26, 1975, a jury trial was waived and claimant pleaded guilty to the reduced charges of possession of the aforesaid drugs.

The Court ordered a presentence investigation prior to penalty imposition which lasted until September 11, 1975. The Milwaukee Road Police monitored this activity during this time. On this date, the Court entered judgment of conviction, sentence withheld, which placed Claimant on one year's probation, under the custody and control of the Milwaukee Department of Health and Social Services and subject to periodic urine surveillance. Each of the three counts were to run concurrently.

While the parties differ as to the time when claimant's superior knew of the conviction and sentence, the official record of the court proceeding was not released to the Milwaukee Road Police until September 29, 1975.

Claimant argues that Carrier violated the agreement by its failure to follow Rule 22 (a) which sets forth, in part:

"Such charges will be filed with the employee within fifteen (15) days from the date the supervising officer would have knowledge of the alleged offense."

Careful reading of Third Division awards explicitly supports the Board's scrupulous concern for the observance of time limitation, particularly as they regard disciplinary charges. Referee Dorsey stated, in part, in Third Division Award 11757:

"When time limitations, for the performance of an act, are embodied in an agreement, with precision, the parties are contractually obligated to comply with them."

Assessing the application of Rule 22 (a) to the instant case, Carrier was not barred from bringing charges against claimant at the time of his arrest on June 19, 1975, or when he pleaded guilty to the reduced charges of drug possession on June 26, 1975. However, Carrier waited until the results of the presentence investigation were completed, which culminated in the Judgment of Conviction, sentence withheld on September 11, 1975.

Claimant argues that when he notified his supervisor that he would be late for work that day (September 11) because he had to report to his probation officer, Carrier was apprised of his conviction. He asserts that Carrier was obligated to commence disciplinary charges pursuant to Rule 22 (a) fifteen (15) days from this date. Carrier, on the other hand, avers that disciplinary action could not be definitively pursued until it examined carefully the official court record which was not released to Road authorities until September 29, 1975. Accordingly, Carrier states that it complied with the time limitation requirements delineated in Rule 22 (a) when it notified claimant by letter on October 9 that charges were preferred against him. Moreover, it contends that the individual whom claimant informed on September 11, 1975 that he was reporting to his probation officer was not in fact claimant's official superior, but another bargaining unit employee.

This Board has never defined what an "alleged offense" should be. This determination is left to the party asserting and preferring charges. An alleged offense could be lateness, insubordination, reckless performance, drug and alcohol usage, physical altercation, theft or a host of other

unacceptable behavioral manifestations. Certainly in the case at bar, Carrier was aware of claimant's arrest and conviction in late June, 1975. Carrier was informed of the presentence investigation by Road police officials. It could have brought charges against claimant anytime subsequent to his arrest. It waited until the adjudication records were officially released.

The investigative hearing record of October 20, 1975, does not indicate with crystal clarity whether claimant's asserted supervisor was fully aware of a conviction, or the precise details thereof. Carrier could not obtain the official record until September 29, 1975. It determined that the full sentence imposed, not just the one year's probation, to wit, placement of claimant under the direction and custody of the Milwaukee Department of Health and Social Services and the periodic urine surveillance, were offensive to its need and requirements.

Based on the entire record, the Board finds that Carrier did not violate Rule 22 (a) as it applies to the particulars and specific fact patterns of this case. Said charges were filed within the required fifteen (15) day period. Conversely, the Board finds that while claimant's conviction was not published or noted in the community at large, the fact that he was placed under the direction and control of the Milwaukee Department of Health and Social Services and additionally subject to periodic urine analysis tests, raises not only a compelling presumption of possible drug usage, but also reflects conduct that is certainly unbecoming to an employee, particularly in this critical industry. Moreover, recognizing the broad spectrum of rulings pertaining to findings of conduct that bring discredit to an employer, the Board notes the relevancy of Award No. 8 of Public Law Board No. 1324 which stated, in part:

"...A drug in this era is a grievous offense to a substantial majority of this Country's population. Furthermore, an offense of this nature would have a serious effect upon fellow employees. Operating employees in this industry must be alert and have all of their wits. They must also have the confidence and faith of their fellow employees...."

The Board is not unmindful of the need to rehabilitate refractory employees, but a persuasive distinction can be made between claimant's problem which requires simultaneous public supervision and a troublesome employee who requires normal but diligent Carrier supervision to correct his behavior. Accordingly, the Board finds that the agreement was not violated.

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 Employes involved in this dispute are respectively Carrier and Employes 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

The Agreement was not violated.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October 1977.