

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22935

Docket Number MW-23099

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Seaboard Coast Line Railroad Company

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

(1) The dismissal of Trackman M. F. McRae was improper, unwarranted and an abuse of justice and discretion [System File C-4(13)-MFM/12-39 (78-20) J].

(2) Trackman M. F. McRae shall now be allowed the benefits prescribed in the first paragraph of Section 3 of Rule 39."

OPINION OF BOARD: Claimant entered Carrier's service May 7, 1974. At the time of the incident giving rise to the dispute herein, he was working as a trackman under the supervision of Roadmaster C. E. Libby and Foreman C. K. Osborne. He did not report for duty on November 21, 1977 and on subsequent dates to December 13, 1977. It developed that he had been arrested on charge of petty larceny and possession of marijuana on November 21, 1977.

On December 21, 1977, the Roadmaster wrote the claimant:

"On December 15, 1977, it was reported to me that on November 21, 1977 you had been placed under arrest by Sgt. Ray Ragsdale of Avon Park, Fla. Police Department and charged with petty larceny and possession of marijuana. On that same date you appeared before County Court Judge Joe Evers, Highland County, Avon Park and entered a plea of guilty to both charges. You were sentenced to serve 10 days on the charge of petty larceny and 30 days on charge of possession of marijuana.

"Because of your absence without permission from Extra Gang 8700 on November 21, 1977 and the days subsequent thereto and for your arrest and conviction as outlined above, you are hereby charged with violation of Bulletin Notice No. 1 and the Rule 17-B of the Agreement between this Railroad and its Maintenance of Way Employees and for violation of those parts of General Rule 18 dealing with dishonesty and uncivil conduct of the current Safety Rules for Engineering and Maintenance of Way Employees and for conduct unbecoming an employee.

"A hearing will be scheduled by the Division Engineer and you will be advised of the time and place."

The investigation was scheduled for December 28, 1977 and was conducted on that date. On January 9, 1978, the Division Engineer notified claimant of his dismissal from service. A copy of the transcript of the investigation has been made a part of the record.

General Rule 18, referred to in the Roadmaster's letter of December 21, 1977, reads:

"Disloyalty, dishonesty, desertion, intemperance, immorality, vicious or uncivil conduct, insubordination, sleeping on duty, incompetency, making false statements, or concealing facts concerning matters under investigation, will subject the offender to dismissal."

Rule 17(b) of the applicable collective bargaining Agreement reads:

"(b) An employee desiring to be absent from service must obtain permission from his foreman or the proper officer. In case an employee is unavoidably kept from work, he must be able to furnish proof of his inability to notify his foreman or proper officer."

A review of the transcript of the investigation shows that substantial evidence was presented in support of the charges against claimant. The Board has previously held that conviction of a crime such as possession of marijuana is sufficient grounds for dismissal (Award 22383). Many awards of this Board have also held that confinement in jail does not constitute unavoidable absence for good cause. See Awards 22868, 21228, 12993 and 6572.

It is also noted that claimant's prior record with respect to absenteeism was far from satisfactory.

On the record before it, there is no proper basis for the Board to interfere with the discipline imposed by the Carrier.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1980.