

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23284
Docket Number CL-23363

Paul C. Carter, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8976) that:

(a) The Carrier violated Rule 27 and others of the Clerks' Agreement when they dismissed Clerk G. L. Martin from all service with the Carrier on July 20, 1978 and

(b) Claimant Martin now be restored to service with all rights unimpaired and compensated for all wages and wage equivalents lost as a result of this violation.

OPINION OF BOARD: The record shows that claimant entered the Carrier's service on July 31, 1974, as an Employment Date Clerk, performing extra work in filling vacancies at Walbridge Yard at Toledo, Ohio. He subsequently acquired a bulletined position and established a seniority dating of August 16, 1975.

At the time of the occurrence giving rise to the dispute herein, claimant was assigned as Storeroom Truck Driver at Walbridge Yard. On May 31, 1978, the Terminal Superintendent wrote claimant:

"Arrange to attend investigation at the YMCA Conference Room, Walbridge, Ohio, 9:00 a.m., Wednesday, June 7, 1978.

You are charged with conduct unbecoming an employee by your having been arrested by the Metro Drug Unit, Toledo, Ohio on May 12, 1978, and charged with complicity in the sale of drugs (Cocaine).

Arrange for representation and/or witnesses if desired."

By agreement, the investigation was postponed and conducted beginning at 9:30 A.M., July 13, 1978. A copy of the transcript of the investigation has been made a part of the record. The claimant stated in the investigation that he had been advised by his legal counsel to not discuss the case other than to profess innocence.

On July 29, 1978, claimant was notified of his dismissal from the service. In subsequent handling of the dispute on the property, the Carrier's Director of Labor Relations advised the General Chairman on September 19, 1979:

"On September 5, 1978, Claimant entered a plea of 'No Contest' Lucas County Common Pleas Court, to one charge of drug trafficking, Ohio Revised Code 2925.03 (A)(1), Case No. CR 78-6098 and was found guilty. On October 17, 1978 Claimant appeared before the same Court and was sentenced to 3-5 years, State of Ohio Department Correction and Rehabilitation, suspended to 5 week-ends in Lucas County Jail and 5 years probation, fined \$500.00 and Court costs.

Case CR 78-5891, second charge of Drug Trafficking was nolle prosequi."

In the same letter of September 19, 1979, the Carrier's Director of Labor Relations also advised the General Chairman:

"In May of 1978, Carrier also learned that Claimant was also arrested on July 30, 1976 by Perrysburg, Ohio Police on charge of Possession Stolen Property, cultivating Marijuana and Possession Marijuana. On August 26, 1976, Claimant signed a plea agreement, Cultivating Marijuana was amended to Permissive Drug Abuse and Possession Marijuana was dismissed. On November 19, 1976, the Court sentenced Claimant to 10 days Wood County Jail, \$200.00 Fine and Costs for Possession Stolen Property, all days suspended on condition no theft offense for 2 years, and \$75.00 Fine and Costs for Permissive Drug Abuse."

Based upon the entire record, there is no proper basis for the Board to interfere in the discipline imposed.

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. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1981.