

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24251
Docket Number CL-24270

Robert W. McAllister, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
{ Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9513)
that:

1. Carrier acted arbitrarily, capriciously, and in a harsh and discriminatory manner, violating Rule 15 and other rules of the Agreement, when on September 8, 1980, it dismissed from service Truck Operator H. K. Spaulding, and

2. As a consequence, Carrier shall:

a. Reinstate H. K. Spaulding to the service, clear his service record of charges set forth in Mr. J. O. Parketon's letter of August 8, 1980, and any reference in connection therewith.

b. Compensate H. K. Spaulding for all time lost and other benefits taken from him as a result of Carrier's action.

OPINION OF BOARD: Seacoast Transportation Company is a subsidiary of Seaboard Coast Line Railroad Company engaged in trucking. The Claimant, H. K. Spaulding, has been employed by the Carrier as a truck operator since June 6, 1965. On July 28, 1980, a Polk County, Florida, Circuit Court Judge sentenced Claimant to ten (10) years probation as a result of his plea of "nolo contendere" to three counts of possession of a controlled substance and one count of possession of drug paraphernalia. On August 1, the Carrier directed Claimant to appear for a formal investigation on August 15, 1980, charging him with violation of Rule 12, conduct unbecoming an employee, and Section 392.4 of the Federal Motor Carrier Safety Regulations dealing with the use and possession of substances which render an employee incapable of safely operating a motor vehicle.

The investigation was held on August 28, 1980, and Claimant was found to be in violation of conduct unbecoming an employee and, thereby, dismissed from service. The Organization argues the Carrier has failed to support its action and, in fact, Claimant never pleaded guilty to the charges and was not adjudged guilty of such charges. The Carrier contends that, while Claimant was off duty at the time of his arrest, the charge of "conduct unbecoming an employee" is well proven from the Claimant's admissions at the investigation and his plea of "nolo contendere".

Notwithstanding both parties contentions over the legal connotation of a plea of "nolo contendere", this Board has reviewed the charges as brought by the Carrier and the record developed at the investigation. That transcript

establishes that the arrest of the Claimant on drug related charges was reported by the Lakeland, Florida, Ledger, and Claimant admitted he was the subject described therein. He also admitted the police, empowered by a search warrant, found drug paraphernalia in his home. Regardless of the nature of his plea, the record clearly shows Claimant to have been placed on ten years probation.

The charge, "conduct unbecoming an employee", encompasses many acts which result in discredit to the railroad (Carrier). The Board's review of the transcript and the manner in which the investigation was conducted fails to establish grounds which would enable us to state Carrier's determination to dismiss the Claimant was not supported by substantial evidence. On the contrary, we find the Carrier had ample justification to find the Claimant had engaged in conduct unbecoming an employee. The record before us fully supports the Carrier's action.

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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of March 1983.

