

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24359
Docket Number MW-24568

Paul C. Carter, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Terminal Railroad Association of St. Louis

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

(1) The dismissal of Foreman Thomas A. Gray for alleged conduct 'unbecoming to an employee' and for alleged non-compliance with 'the conditions and terms set forth in Chief Engineer J. R. Bowman's August 1, 1980 letter' was unwarranted, without just and sufficient cause and on the basis of unproven charges (System File TRRA 1981-3).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Prior to the incident giving rise to the dispute herein, Claimant had been out of Carrier's service for some time. On August 1, 1980, the Carrier's Chief Engineer wrote the following letter to Claimant:

"This will confirm our meeting of Wednesday, July 23, 1980, at 10:00 AM with Mr. Martin Smith, Mr. M. C. Bradford, Dr. J. Somers, you and the undersigned present.

As agreed, you may return to service on Tuesday, September 2, 1980 on a probationary basis for a period of six (6) months provided you strictly adhere to the following conditions that were specifically outlined during the course of the referred to meeting:

1. You will continue to meet the obligations outlined by the Madison County Circuit Court and your Probationary Officer.
2. You will continue to actively pursue the AA Recovery Program and actively seek the assistance of your AA Sponsor and the professional service of Dr. Somers.
3. You will not violate any rules, regulations or orders of the Terminal Railroad Association of St. Louis.

On a personal note, Tom, I wish you the best for the future.

Your acceptance and return of the original and first copy of this letter will be appreciated."

The Claimant and the General Chairman agreed to the stipulations in the above quoted letter.

On November 23, 1980, Claimant was involved in an affair in Collinsville, Illinois, that resulted in his arrest and subsequently pleading guilty to charges of Criminal Trespass and Battery on January 8, 1981, and his being fined \$90.00 on each charge and sentenced to fifteen week-ends of work in the Madison County jail. On March 9, 1981, the Carrier became aware of the occurrence and Claimant's plea of guilty to the charges mentioned. On March 11, 1981, Claimant was notified:

"A hearing will be held at 1:00 P.M., Thursday, March 19, 1981 at the Hearing Room in the General Superintendent's office building located at Northend Westbound Yard, Madison, Illinois to develop the facts and your responsibility, if any in connection with your conduct unbecoming to an employee of the Terminal Railroad Association of St. Louis - specifically your plea of guilty and sentencing on January 8, 1981, for (1) 'Criminal Trespass to Land', and (2) 'Battery' in violation of Rule - M of the TRRA's General Rules, as amended, and to determine whether or not you complied with the conditions and terms set forth in Chief Engineer J. W. Bowman's August 1, 1980 letter permitting you to return to work on a probationary basis, signed and accepted by you on August 7, 1980.

Arrange to be present. You are entitled to representation and witnesses in accordance with Rule 24 of the current Agreement between Terminal Railroad Association of St. Louis and the Brotherhood of Maintenance of Way Employees."

The hearing was held as scheduled and on April 1, 1981, Claimant was notified of his dismissal from the service. A copy of the transcript of the hearing has been made a part of the record.

Carrier's Rule "M" of its General Rules reads:

"M - Employees will not be retained in the service of the company, who are careless of the safety of themselves or others, insubordinate, dishonest, immoral, quarrelsome, or otherwise vicious, failure to comply with instructions in whatever form issued or who conduct themselves in a manner which should subject the railroad to criticism.

Any act of hostility, misconduct or willful disregard or negligence affecting the interest of the company is sufficient cause for dismissal and must be reported."

The record shows that Claimant's six months probationary period began on September 2, 1980. The acts for which he pled guilty on January 8, 1981, occurred on November 23, 1980. The acts, the plea of guilty and the sentencing were within the six months probationary period.

In the hearing, or investigation, Claimant contended that the only reason that he pled guilty was that he would not miss any work, and the possibility of losing his job. It would seem reasonable that if Claimant was concerned about his job at the time of his arrest and prior to the plea of guilty, he would have contacted an officer of the Carrier, especially as he was on probation under the terms of the letter of August 1, 1980.

Based upon our study of the transcript of the hearing, or investigation, held on March 19, 1981, we find that substantial evidence was produced by Carrier in support of the charge against Claimant. The Board has frequently upheld discipline of employees for acts committed off duty and for which they are convicted or plead guilty in court. See Award 24124, 22745 and Second Division Award 8050. In addition, the Carrier has submitted Awards Nos. 252 and 276 of Public Law Board No. 1906, and Award No. 23 of Public Law Board No. 2597, all involving the present Carrier, upholding the disciplining of employees for acts committed while off duty.

The letter of August 1, 1980, quoted early in this Award, permitting Claimant to return to service on a probationary basis, shows that Carrier has previously attempted remedial action with the Claimant.

The claim will be denied.

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.

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 13th day of May 1983.