

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32953
Docket No. CL-33743
98-3-97-3-203**

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Burlington Northern Santa Fe Railway

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11719) that:

- (1) Carrier acted in an arbitrary, capricious and unjust manner when it dismissed Mr. James P. Greear from the service of Burlington Northern Santa Fe Railway for alleged violation of General Rules 1.6 - Conduct, and 1.9 - Respect of Railroad Company, as set forth in letter dated November 22, 1995.**
- (2) Carrier shall now be required to restore Mr. Greear to Carrier's service with all seniority, vacation and other rights unimpaired.**
- (3) Carrier must pay Mr. Greear for all time lost, commencing October 27, 1995, and continuing until he is restored to service.**
- (4) Carrier must pay Mr. Greear any amount incurred for medical or surgical expenses for himself or his dependents to the extent that such payments could have been paid by Travelers Insurance Company under Group Policies GA-23000 or GA 46000 and, in the event of the death of Mr. Greear, pay his estate the amount of life insurance provided for under said policies. Carrier must also reimburse Mr. Greear from premium payments made in the purchase of health, welfare and life insurance. Carrier must also pay Mr. Greear any amount incurred for dental expenses for himself and his dependents to the extent that such payments could have been paid by Aetna Insurance Company under the National Dental Plan. Further, Carrier must reimburse Mr. Greear for the premium payments made in the purchase of suitable dental insurance.**

- (5) Carrier must grant to Mr. Greear any and all benefits he may have been able to attain relative to the Master Implementing Agreement (MIA) dated December 19, 1995, between Transportation Communications Union and the Burlington Northern Santa Fe Corporation, as if he was never dismissed from service.
- (6) Carrier must also remove any comments in Mr. Greear's personal record that reference the investigation and the Carrier's decision."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant, with over 40 years of seniority, was employed at all material times herein as an Overcharge Claim Clerk in the Carrier's offices at St. Paul, Minnesota. On May 25, 1995, the Claimant was charged with criminal sexual conduct and on October 16, he pleaded guilty and was sentenced to 30 days in jail. On the evening of October 23, the Claimant reported to jail. Before he did so, he sought and received from the Carrier permission to be off from work the following day. On October 25, the Claimant was released pursuant to a work release program and reported for duty. Later that same day the Carrier was notified that he was working that day, pursuant to the work release program. Two days later, October 27, the Carrier removed the Claimant from service, charging him with conduct unbecoming and "... failure to conduct yourself in such a manner that the (Carrier) would not be subjected to criticism and loss of goodwill." After Investigation, Carrier dismissed the Claimant.

The Organization contends that because Claimant was charged with off-duty misconduct the Carrier must prove a nexus to his work which, in the eyes of the

Organization, it has failed to do. The Carrier on the other hand asserts that it dismissed the Claimant under its Rule prohibiting immoral conduct, which does not have a nexus requirement. In the alternative, it asserts that it has proven a nexus adequate to justify dismissal.

There can be little doubt that discipline for off-duty misconduct requires some nexus to the legitimate interests of the Carrier. Indeed, the cases cited by the Organization so hold. However, in some cases that nexus is provided by the nature of the off-duty misconduct itself. Examples of such cases would be where the off-duty misconduct involves acts of moral turpitude or rises to the level of unconscionable behavior that should not be countenanced. Indeed, cases cited by the Carrier so hold and do so involving matters identical or similar to the circumstances presented herein. When we view the facts of the instant matter in the light of these cases cited by the parties we find that the Claimant's case more closely approximates those cited by the Carrier. Thus, we find that the Carrier has established not only that the Claimant is guilty of the Rule violation with which he is charged, but also that his dismissal was warranted under the circumstances.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of November 1998.