

PUBLIC LAW BOARD NO. 2556

Award No. 26

Case No. 32
File No. MW-392

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Railway Company

Statement

of Claim: Claim that former Machine Operator C. V. Jones be restored to service with seniority and other rights unimpaired and paid for all time lost as a result of his dismissal on August 31, 1981 for violation of Operating Rule G, conduct unbecoming an employee, and failing to protect his assignment.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 17, 1979, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant Machine Operator, on or about July 13, 1981, was a member of Carrier's rail transposing gang working at Russelville, Alabama. Camp trailers were provided at Russelville adjacent to Carrier's Russelville, Alabama Depot for the employees to stay in throughout their work week.

Claimant, was arrested, on July 13, 1981, by the Russelville, Alabama Police Department when he sold, or attempted to sell, a controlled substance to undercover police officers at the location where Carrier's camp trailers were located. He was charged with violation of the Alabama Controlled Substance Act and was incarcerated in jail from 7:58 PM on July 13th until 1:36 PM on July 15, 1981 at which time he was released on bail.

Claimant was notified, under date of August 8, 1981 to attend a formal investigation on August 17, 1981, charged with:

"Violation of Operating Rule G and conduct unbecoming an employee of Southern Railway on July 13, 1981. You will also be charged with failure to protect your assignment on July 14, 1981 and July 15, 1981."

As a result of the investigation held, Carrier concluded Claimant to be guilty of the charges. He was dismissed as discipline therefor.


The Board finds that Claimant was accorded the due process to which entitled under Agreement Rule 40.


There was sufficient evidence adduced, including the admissions of Claimant, to support the conclusions reached by Carrier as to Claimant's culpability. Despite this record Claimant subsequently entered a plea of guilty. He was sentenced to 2 years in state prison, which was suspended and Claimant was placed on probation for three years.

The Board finds that the discipline assessed in light of the seriousness of the rule violation is not unreasonable. Claimant had engaged in an improper, illegal and illicit activity. His arrest received publicity which was adverse to and detrimental to the interest of Carrier and his fellow employees. This claim will be denied.

Award: Claim denied.


Bryce L. Hall, Employee Member


D. N. Ray, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued September 10, 1983.