

PUBLIC LAW BOARD NO. 7254

**PARTIES) UNITED TRANSPORTATION UNION
TO)
DISPUTE) BNSF RAILWAY COMPANY**

STATEMENT OF CLAIM:

Claim and appeal in behalf of Sioux City, IA Conductor T. E. Saltzman, Jr., for immediate return to service, pay for all time lost, including investigation, and complete record clearance, account dismissed on October 22, 2007, for alleged violation of GCOR Rules 1.6 and 1.6.2 (alleged conduct unbecoming an employee for guilty plea on August 10, 2007, to felony conviction of embezzlement of union funds and failure to properly report the felony within forty-eight (48) hours. First knowledge obtained by BNSF Resource Protection on September 17, 2007). (UTU File: DISP SALTZMAN 9/17/07; Carrier File: 53-08-0007)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

On July 11, 2007, Claimant entered into a guilty plea in the United States District Court for the District of Nebraska for one felony conviction for embezzlement of union funds, Count I of a submitted guilty plea reading as follows:

Between on or about the 5th day of September, 2001, and on or about the 30th day of November, 2006, THOMAS E. SALTZMAN, the defendant herein, embezzled, stole, and unlawfully and willfully abstracted and converted to his own use, or the use of another, any of the moneys, funds, securities, property, and other assets of a labor organization of which he was then an officer, or by which he was then employed, directly or indirectly.

In violation of Title 29 U.S.C. Section 501 (c).

The United States Attorney for the District of Nebraska signed and accepted the Claimant's guilty plea on July 30, 2007, and sentencing was set for October 23, 2007.

A subsequent Press Release from the office of the United States Attorney's Office for the District of Nebraska related that Claimant was sentenced to serve five months in the custody of the Bureau of Prisons, which was to be followed by a three-year term of Supervised Release, including a condition that he serve an additional five months of house arrest under electronic surveillance, and to pay \$35,528.06 in restitution and a \$100 special assessment.

Upon obtaining knowledge of Claimant's guilty plea, the Carrier, under date of September 28, 2007, served notice upon Claimant to appear for an investigative hearing in a charge that reads as follows in part here pertinent:

[For] the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged conduct which resulted in your guilty plea on August 10, 2007 to felony conviction or embezzlement of union funds and your failure to properly report the felony within 48 hours. First knowledge of this alleged violation was obtained by BNSF Resource Protection on September 17, 2007.

Following the company hearing, which was held on October 10, 2007, the Claimant was notified that as a result of being found guilty as charged he was dismissed from employment for violation of General Code of Operating Rules (GCOR) 1.6 and 1.6.2.

GCOR Rule 1.6, Conduct, reads:

Employees must not be:

1. Careless of the safety of themselves or others.
2. Negligent.
3. Insubordinate.
4. Dishonest.
5. Immoral.
6. Quarrelsome.
- or
7. Discourteous.

GCOR Rule 1.6.2, Notification of Felony Convictions, prescribes:

The conduct of any employee leading to conviction of any felony is prohibited. Any employee convicted of a felony must notify the

proper authority of that fact within 48 hours after the employee receives notice of the conviction.

In defense of Claimant it was principally offered that although Claimant had pled guilty to embezzlement on July 11, 2007, he had not been convicted at the time, and that in awaiting sentencing, which occurred on October 23, 2007, or 13 days after Claimant had been notified that he was dismissed from service, Claimant sincerely believed he was in fact in compliance with GCOR rules in not having reported his plea agreement as a felony conviction.

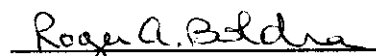
The Board is not persuaded that a difference exists between Claimant's guilty plea and his awaiting sentencing as constituting a circumstance not covered by GCOR Rule 1.6.2. Certainly, in entering into a plea agreement Claimant knew or should have known that he was admitting to having engaged in a felony for which he was to be sentenced. This was not a situation where an individual is challenging the commission of an offense, and therefore awaiting the outcome of a jury trial for it to be determined as to whether or not they were guilty of having committed a felony. Furthermore, as the Carrier submits, Claimant acknowledged that he was guilty of having committed a felony offense when he signed "Yes" to a court document that reads in part: "Do you understand that, if you plead GUILTY to a felony offense, this may deprive you of valuable civil rights, such as the right to vote, to hold public office, to serve on a jury and to possess any kind of firearm?"


The record as presented supporting a finding that Claimant engaged in actions in violation of above quoted GCOR Rule 1.6 and GCOR Rule 1.6.2, the Board has no basis to disturb discipline as imposed by the Carrier as being harsh and excessive.

AWARD:

Claim denied.


Robert E. Peterson
Chair & Neutral Member


Roger A. Boldra
Carrier Member


Jay L. Schollmeyer
Organization Member

Fort Worth, TX

Dated: 11-17-07