

Award No. 4689

Docket No. 4445

2-CB&Q-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. The Chicago, Burlington & Quincy Railroad Company violated the controlling agreement by closing out of service J. P. Vaglica, 437 AB Repairman, Galesburg, Illinois for failure to protect his regular assignment on August 1, 1962, as result of having been arrested at 6:15 P. M., July 31, 1962.

2. That accordingly, AB Repairman J. P. Vaglica be reinstated to service of the Chicago, Burlington & Quincy Railroad Company without loss of seniority, make claimant whole for all vacation rights, pay the premiums (for hospital association dues) for Hospital, Surgical and Medical Benefits for all time held out of service, and pay the premiums for Group Life Insurance for all time held out of service, and compensate the claimant, Mr. Vaglica, for all time lost from August 8, 1962, until so restored.

EMPLOYES' STATEMENT OF FACTS: The charge against AB Repairman J. P. Vaglica under date of August 8, 1962 was "For failure to protect your regular assignment on the Galesburg repair track, August 1, 1962 as result of your having been arrested at 6:15 P. M., July 31st charged with indecent liberties and held in the Knox County Jail until 2:45 P. M., Aug. 1st at which time you were released on \$2,500.00 bail and later pleaded guilty to the lesser charge of (contributing to Delinquency of a Child) for which you were fined \$50.00 plus \$37.30 costs and placed on probation for 2 years and given two months in which to pay your fine and costs."

It was established at investigation that AB Repairman J. P. Vaglica requested fellow workman Mr. S. Mustapich to have the Local Protective Board Chairman C. D. Lammerts report him absent on August 1, 1962.

The transcript of investigation reveals extensive questioning concerning Mr. Vaglica being arrested on July 31, 1962 for taking indecent liberties with a minor female child.

Therefore, Mr. Vaglica did protect his assignment on August 1, 1962, as acknowledged in Mr. J. D. Rezner's letter of January 15, 1962 to the under-

To which were added the following amendments at subsequent conventions:

Fifth: To allow no one to become or remain a member of the order who does not live a good, sober and moral life." (Emphasis ours.)

The prosecution of this claim before the Second Division is contrary to the avowed purposes for the founding of the Brotherhood Railway Carmen of America.

In conclusion, the carrier summarizes its position in this docket as follows:

1. Claimant admittedly failed to protect his assignment as Carman on the Galesburg Repair Track on August 1 and 2, 1962.

2. Claimant also admittedly was guilty of the criminal offense of contributing to the sexual delinquency of a minor child, for which he was fined and placed on two years' probation.

3. Either one of these charges would be sufficient to support his dismissal; since there is no question but that both were committed, his contention that he was unjustly dismissed is without foundation.

In the light of this record, the claim must be completely and summarily denied.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

The Claimant, Air Brake Repairman J. P. Vaglica, A Carrier employe since January 18, 1959, worked a regular assignment Wednesday through Sunday from 7:15 A. M. to 3:45 P. M. at the Carrier's facility at Galesburg, Illinois. The Claimant lived in Oneida, a town 11 miles east of Galesburg.

On Tuesday, July 31, 1962, at 6:15 P. M., the Claimant was arrested for taking indecent liberties with a 7 year old female—who stayed overnight at his home on Saturday, July 28, 1962. The Claimant was held in the Knox County Jail until 2:00 P. M. on August 1, 1962, when he was released on \$2,500 bail.

On August 7, 1962, the Claimant pleaded guilty to the lesser charge of contributing to the sexual delinquency of a child. He was fined \$50.00, plus court costs of \$37.30, and placed on probation for two years.

On August 8, 1962, the Claimant was dismissed from the Carrier's service. On August 27, 1962, an investigation was held and the discipline assessed against the Claimant remained unchanged.

The Carrier's charge against the Claimant is "for allegedly failing to protect his regular assignment on August 1, 1962, and having been arrested on July 31 for taking indecent liberties with a minor".

The Organization contends that the record establishes that the Claimant complied with Rule 19(e) of the controlling Labor Agreement.

The Carrier contends that it was justified in dismissing the Claimant from service, because the Claimant failed "to protect his assignment" and because of "his arrest, confinement in jail and subsequent plea of guilty to a crime involving moral turpitude . . .".

Rule 19(e) reads as follows:

"An employe detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible."

The question of whether or not the Claimant notified his foreman is moot. The record undeniably establishes that the Claimant was not absent for "good cause". The record also establishes that the Claimant's dismissal was justified.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1965.