

An investigative hearing was held on May 25, 1977 pursuant to Agreement Rule 37 wherein Claimant was found guilty of the charges and subsequently dismissed from service, effective June 1, 1977.

Accordingly, consistent with our appellate responsibility, we thoroughly reviewed the transcript and documentary submission to determine whether Claimant was provided a fair and impartial hearing. We do not find after this examination, that the proceeding was partial or biased. Instead we find that the investigative record solidly substantiates the critical specifications, namely, that the claimant displayed a total, if not wanton, disregard for his work and committed a criminal act that is unequivocally apposite the intent and purpose of Rule E.

Claimant was arrested and convicted of violation Sec. 288 of the California Penal Code (lewd and lascivious act upon children under 14), which prevented him from reporting to work. He admitted that he did not protect his assignment, but offered no explanation why he was absent.

This Board has long held that imprisonment in itself does not constitute an unavoidable absence. Our case law is legion on this point. (See for example, Second Division Award 7067.) Claimant was responsible for meeting his employment obligations and he did not do so. His absences were the direct result of his criminal transgressions, not the decisional whims of the employer.

Carrier is legislatively vested with a special public interest that far transcends the bounds of most employment relationships.

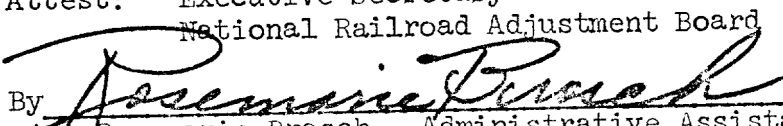
The safe and orderly administration of a railroad demands, at a minimum, the procurement and retention of employees with unquestioned moral turpitude. Claimant's behavior and employment indifferent admittedly did not comport with this high standard or the specific rules promulgated to enforce it. It is in essence deportment that cannot be countenanced. Accordingly we not no recourse under the particular facts and developments of this case, other than to sustain the dismissal penalty.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of March, 1979.