

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

Parties to Dispute: (System Federation No. 99, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That Laborer C. R. Ferguson was unjustly dismissed from service on February 17, 1978.
2. That accordingly, the Illinois Central Gulf Railroad be ordered to return Laborer Ferguson to work immediately, with full seniority, pay for all time lost and restoration of all benefits due him.

Findings:

The Second 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 waived right of appearance at hearing thereon.

C. R. Ferguson, the claimant, a laborer at carrier's Johnston Roundhouse in Memphis, Tennessee, was discharged from service for possession of a controlled substance and for conviction in criminal court on that charge. He was also charged with **failing** to protect his assignment from January 14, 1978, to January 30, 1978, while he was in jail. The organization alleges that the carrier made it impossible for the claimant to protect his assignment **because** it refused to cooperate in a work release program that would have allowed him to be at work.

The record before this board clearly supports the position of the carrier. The claimant pleaded guilty to possession of a controlled substance. He was placed in the Shelby County Penal Farm and was unavailable for work. On numerous occasions, this Board has stated that incarceration is not considered unavoidable absence from work for good cause. In these instances, carriers were upheld by this Board if discharge resulted from the inability of an employee to appear at work because he was in jail as a result of a crime he committed.

The organization's argument that carrier caused the claimant to remain in jail by not participating in a work release program cannot prevail. Carrier's officials are responsible for the decision to participate in such programs. Carrier is under no contractual or legal obligation, or bound by the directions of this Board to participate in these programs.

The claimant in this case, by his own fault, caused himself to be absent from work without authority. This Board has no recourse but to uphold the carrier's position, despite its refusal to participate in a work release program.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of April, 1980.