

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11387
Docket No. 11270
2-CR-EW-'87

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Consolidated Rail Corporation

Dispute: Claim of Employees:

In accordance with the agreement between the I.B.E.W. and the Consolidated Rail Corporation, I wish to appeal the results of the trial of Robert F. Bensch, Electrician held January 24, 1986. As I stated in my letter to Mr. Haldi of January 17, 1986, and again at the trial, this trial was unjust, due to the fact that a proper defense could not be presented, without having the opportunity to meet with Mr. Bensch, and also that Mr. Bensch himself was unable to attend.

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 employes 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.

Claimant was in the Carrier's service as a B&B Electrician. As a result of charges dated December 10, 1985, and Trial eventually held after several postponements on January 24, 1986, Claimant was dismissed from service by letter dated January 30, 1986, for being absent without authorization and for conduct unbecoming an employee.

The record shows that on October 31, 1985, Claimant entered a guilty plea in the Court of Common Pleas of Wood County, Ohio, to the offense of gross sexual imposition. On December 2, 1985, Claimant was sentenced to a two year jail term. Claimant worked three hours on December 3, 1985, but did not complete his tour of duty. In addition, Claimant did not report for duty on December 4 - 6 and 9 - 10, 1985. The time missed was without permission. The Trial in this matter was held in absentia. However, Claimant's Representative was present at the Trial.

The Organization contends that the Trial was unfair in light of the inability of Claimant's Representative to speak with Claimant and the fact that the Trial was held in absentia. We do not agree. With respect to the inability to prepare argument, we note that Claimant was timely advised of the charges against him by letter dated December 10, 1985, and was informed at that time of his right to have representation and witnesses in his defense. We further note that the Trial was originally scheduled for January 2, 1986, was rescheduled to January 9, 1986, and was eventually held on January 24, 1986. We are of the Opinion that Claimant had ample opportunity to prepare his defense during the period of time from the date of the charges until the date of the Trial. Although notified of his rights to obtain representation and present his defense, Claimant chose not to make use of those rights. With respect to the holding of the Trial in absentia, Claimant's incarceration and his ultimate failure to appear at his Trial in this matter were the result of Claimant's own actions. Further considering the additional time afforded by the Carrier in which Claimant could have prepared his defense, under the circumstances of this case, we believe that Claimant has not demonstrated that his right to a fair and impartial trial guaranteed to him by Rule 6 has been violated.

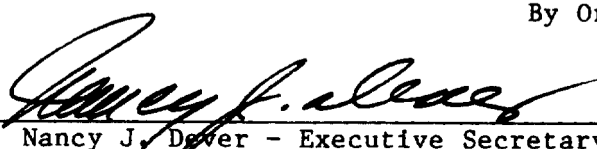
With respect to the merits, we find substantial evidence exists in the record to support the Carrier's decision to take disciplinary action. Rule T requires employees to report for duty at the proper time and not be absent without permission. Claimant clearly was in violation of that Rule. Confinement in jail is a circumstance that Claimant placed himself in and was a consequence of his own personal conduct. In this case, such confinement does not excuse Claimant from his obligation to report for duty. See Second Division Award 6606, Third Division Award 19568. Moreover, we find no reason in the record to disturb the Carrier's conclusion that the criminal charge admitted to by Claimant amounted to conduct unbecoming an employee. Under the circumstances, we cannot say that the assessment of dismissal was either arbitrary or capricious and we shall not disturb that action.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 18th day of November 1987.