

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 12878  
Docket No. 12769  
95-2-93-2-65

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists and  
( Aerospace Workers  
( CSX Transportation, Inc. (formerly  
( Baltimore and Ohio Railroad Company)

STATEMENT OF CLAIM:

- "(1) That, in violation of the current agreement, CSXT (former Baltimore & Ohio Railroad Company) arbitrarily disciplined Machinist F. M. Lohr by unjustly suspending him for the time spent in jail. The suspension was effective on April 13, 1991. (sic)
- (2) That, accordingly, CSXT, be ordered to compensate Machinist Lohr for all time lost at the pro-rata rate of pay as of April 13, 1991 (sic) and that his record be cleared."

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.

Claimant, on March 10, 1992, was sentenced to one year in jail for driving while intoxicated. The one year jail term was commuted to a work release program, providing Carrier would allow Claimant to work under those conditions.

The Carrier in the meantime did, on March 13, 1992, serve Claimant with a notice of charges for "... conduct unbecoming an employee...." and scheduled an Investigation for March 25, 1992. At the request of the Organization the Investigation was postponed to April 1, 1992.

On April 13, 1992, Claimant was assessed discipline of:

"... the time you spend in jail as the result of your sentence, or until you are granted work release."

The Carrier permitted Claimant to resume working his regular job under the work release program effective April 16, 1992.

When Claimant was committed to jail, he was paid vacation time from March 12 through 30, 1992, and because he commenced the work release program on April 16, 1992, he lost only 10 days pay.

The Organization's position is that Carrier failed to substantiate that Claimant's incarceration for a D.W.I. was conduct unbecoming an employee. From this Board's view such conduct is not becoming. A claim for compensation lost because of jail time will not be sanctioned by this Board.

As an aside, the April 13, 1991 date set forth in the Statement of Claim is accepted as a readily explained typographical error emanating from the incorrectly dated April 13, 1991 letter of the Carrier which assessed the discipline.

#### AWARD

Claim denied.

#### ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

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NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Dated at Chicago, Illinois, this 17th day of April 1995.