

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13957
Docket No. 13842
08-2-NRAB-00002-070031
07-2-31**

The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railway Carmen Division of TCIU
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

- “1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 13.1, when they arbitrarily terminated the employment of Carman Jeremy W. Basford in letter dated February 22, 2006.**
- 2. That accordingly, the Springfield Terminal Railway Company be required to compensate Carman Jeremy W. Basford in the amount of eight (8) hours pay for each workday that he was withheld from service. Furthermore, the Carrier be required to compensate Carman Jeremy W. Basford as follows:**
 - 1. All vacation lost as a result of this discipline;**
 - 2. All lost wages as a result of this dismissal until restored;**
 - 3. All holiday rights;**
 - 4. All personal day rights and credits;**
 - 5. All seniority rights;**
 - 6. All Health and Welfare rights;**
 - 7. All retirement benefits;**
 - 8. Compensate Carman Jeremy W. Basford for all premiums lost as a result of the improper discipline;**
 - 9. Compensate Carman Jeremy W. Basford for all dental care benefits, vision care benefits surgical care benefits and hospital care benefits;**

- 10. Compensate Carman Jeremy W. Basford for all life and sickness insurance benefits;**
- 11. Expunge from the record all discipline on behalf of Carman Jeremy W. Basford as a result of the charges brought against 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 were given due notice of hearing thereon.

On January 4, 2006, Carrier notified Claimant to appear for a formal Investigation on January 24, 2006 concerning the following charge:

“This Notice of Hearing is issued to develop the facts and place your responsibility, if any, in connection with incident(s) outlined below:

**Your conviction in Somerset County Superior Court on January 3, 2006
for unlawful sexual behavior, as detailed in the January 4, 2006 edition
of
the Bangor Daily News. Your behavior is in violation of the following
General Rules:**

RULE GR-C which states in part: "Employees must conduct themselves in Such a manner that their Company will not be subject to criticism or loss of good will."

RULE GR-L which states in part: "Employees who are dishonest, immoral, vicious, quarrelsome, uncivil in deportment or who are careless of the safety to themselves or others will not be retained in service."

On February 22, 2006, Claimant was notified that he had been found guilty as charged and was dismissed.

It is the position of the Organization that the Carrier did not prove beyond a reasonable doubt that Claimant was guilty. In addition it argues Claimant was denied due process as the Investigation was held in his absence while he was ill and because of that the Board should rescind the dismissal.

It is the position of the Carrier that Claimant's off-duty mis-behavior appeared in the local newspaper and the record established that on January 3, 2006, the Claimant pled guilty to a felony for unlawful sexual behavior with a minor child. Additionally, it points out that Carrier officials witnessed the Claimant being arrested and led away from its property in hand-cuffs by local police. Lastly, it states the Investigation was fair and it had a right to go ahead with the Hearing in Claimant's absence because he never requested a postponement nor did he offer any excuse for not attending. Furthermore, in light of the seriousness of his offense its assessment of dismissal was appropriate and should not be disturbed.

The Board has reviewed the transcript and record of evidence and finds that Claimant chose not to appear at the Investigation and he offered no proof that he was ill and could not attend the Hearing. The Carrier did not violate the Claimant's right to a fair and impartial Hearing in this instance when it was held in absentia. It is further noted there is no requirement that an accused must attend their formal Investigation, but when a charged employee chooses not to attend, he does so at his own potential peril because he offers no rebuttal or alternative theory or story. See

Second Division Awards 11763, 13217, 13360, 13491 and 13924. The dispute will be resolved on its merits.

Therefore, turning to the merits the Board finds that on January 3, 2006, the Claimant pleaded guilty to a felony and was sentenced to four years in jail for unlawful sexual behavior with a 13 year-old baby sitter and became a registered sex offender for life. The record further indicates that Carrier officials witnessed the Claimant being led away from its property in hand-cuffs and the information obtained by Police Sergeant Falvey corroborated the facts outlined in the news article that was published in the local newspaper regarding Claimant's behavior. It is clear that the Carrier has met its burden of proof that Claimant was guilty as charged.

Because the Claimant elected not to attend the Investigation the evidence that was presented by the Carrier, which was substantial, stands un-refuted. Therefore, the Board finds and holds that the dismissal is appropriate as it was not arbitrary, excessive or capricious. The discipline will not be set aside.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 23rd day of October 2008.