

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

Parties to Dispute: (System Federation No. 91, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That under the Current Firemen and Oilers Agreement, as amended, Service Attendant B. L. Fant, Jr., was unjustly dismissed from service of the Louisville and Nashville Railroad Company on November 27, 1974, at South Louisville Shops, Louisville, Kentucky, after a summary investigation on November 1, 1974.
2. That accordingly, Service Attendant B. L. Fant, Jr., be restored to service with his seniority rights unimpaired, vacation, health and welfare, hospital and life insurance rights in addition be compensated for all time lost, effective November 27, 1974.

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.

On October 15, 1974, claimant was charged:

"*** with leaving your assignment without permission on Friday, October 4, 1974 at approximately 11:50 a.m., which resulted in your duties not being performed and your supervisor not being able to determine your whereabouts."

Investigation was conducted, at which claimant was represented by the General Chairman, Local Chairman and a Committeeman.

At the investigation it was developed that claimant left the Carrier's property at the beginning of his lunch period for the stated purpose of obtaining lunch. His lunch period extended from 11:30 A.M. to 11:50 A.M. While off Carrier's property, claimant was arrested by City police authorities for operating an automobile with an expired driver's license and threatening the arresting officer. Claimant was placed in jail, released about 4:00 P.M., went to the shops about 7:00 P.M. or 7:30 P.M., and reported his whereabouts to supervisors. On November 27, 1974, claimant was notified of his dismissal from the service.

The contention was made that claimant was in compliance with Rule 22 of the Agreement which reads:

"An employe detained from work account of sickness or other good cause shall notify his foreman as early as possible."

This Board has held that confinement in jail does not constitute unavoidable absence for good cause. Second Division Awards 6606, 4689, and Third Division Awards 19568, 18816, 12993, 6572.

The Carrier has called attention to claimant's unsatisfactory work attendance record, but the record does not indicate previous discipline on this account.

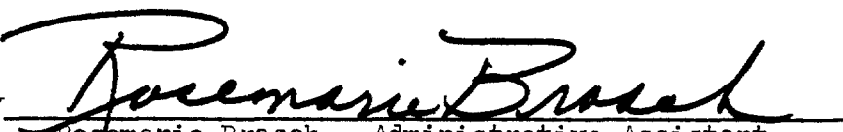
Based upon the entire record the Board finds that discipline was warranted; however, permanent dismissal was excessive. Claimant should be restored to service with seniority and other rights unimpaired, but without pay for time lost.

A W A R D

Claim disposed of per findings herein.

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 5th day of April, 1977.