

The Second Division consisted of the regular members and in addition Referee Walter C. Wallace when award was rendered.

Parties to Dispute: (System Federation No. 106, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(Washington Terminal Railway Company

Dispute: Claim of Employees:

1. That under the current agreement Stanley Watts, Laborer, was unjustly dismissed from the service of the Carrier effective January 3, 1977.
2. That accordingly the Carrier be ordered to reinstate Stanley Watts with seniority unimpaired, made whole for all wages lost from January 3, 1977, protected for health and welfare rights, Railroad Retirement benefits, vacation rights, and all other benefits of the agreement from January 3, 1977 - date he was dismissed.

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.

The claimant is a laborer with the Carrier who was dismissed from service effective January 3, 1977 based upon his absence for more than five days under Rule 4. Claimant was a short term employee of less than one month service which began on December 6, 1976. On December 20, 1976 he was arrested for assault with a deadly weapon and burglary. On December 28, 1976 he was sentenced to serve six months at a reformatory. These facts are not in contest although Claimant indicates he had entrusted his lawyer to notify the Carrier of his predicament. In addition, the complaining witness in the criminal prosecution indicates by letter she now recants on her accusations.

Claimant requested a hearing under Rule 32 of the applicable agreement which provides:

"No employe shall be disciplined without a fair hearing by designated officer of the Carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employe will be apprised of the precise charge and given reasonable opportunity to secure the presence of necessary witnesses. If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal."

The key question here is whether or not incarceration for a criminal offense constitutes absence for good cause under Rule 4 which provides under subsection (c):

"In case an employe is unavoidably kept away from work on account of sickness, or for any other good cause, he shall notify his foreman as early as possible, either by telephone, or messenger, or United States Mail. Employes absenting themselves for five days without notifying the Management shall be considered out of service and dropped from the rolls and seniority roster, unless a justifiable reason can be shown as to why notice was not given or sent."

: We rely upon the awards of this Division that hold that such absences are not for good cause. In Award 6606 (Yagoda) it was stated:

"Claimant has placed himself in the position of being absent from service, but not unavoidably. He should be cognizant of and is liable for the consequences of violating the law. His conscious violation of the law does not constitute an unavoidable absence for good cause; violations of the law are presumed avoidable."

It follows that claimant's contentions regarding his lawyer's failure to notify the Carrier do not avoid this consequence and it follows that we need not reach the question of claimant's right to a hearing. He was dropped from the rolls pursuant to Rule 4(c). See Third Division Award 12993 (Hall).

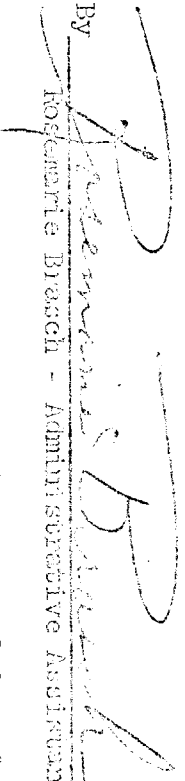
On this basis we do not find the contract has been violated.

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 Brach - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of June, 1978.