

The Second Division consisted of the regular members and in addition Referee Josef P. Sirefman when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(Louisville and Nashville Railroad Company

Dispute: Claim of Employes:

1. That under the current and controlling agreement, as amended, Service Attendant James D. Jackson, I. D. No. 422240, was unjustly suspended from the service of the Louisville and Nashville Railroad Company on July 31, 1979 and subsequently dismissed on October 11, 1979, after a formal investigation was held in the office of Mr. B. R. Montgomery, Master Mechanic and Conducting Officer, on September 25, 1979.
2. That accordingly James D. Jackson, Service Attendant be restored to his regular assignment at Howell Shops, Evansville, Indiana, with all rights unimpaired and compensated for all time lost, vacation, health and welfare, hospital and life insurance and dental insurance be paid effective July 31, 1979 (date of suspension) and the payment of 6% interest rate added thereto.

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 employe 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, a Service Attendant, was employed by the Carrier on November 27, 1978. On July 31, 1979 he was suspended from service pending an investigation on the charge of "conduct unbecoming an employee, in that on July 31, 1979, you were convicted of house burglary, a class B felony ... and sentenced to six years". The investigation was held on September 25, 1979 and Claimant was dismissed from service on October 11, 1979.

Although the burglary for which Claimant was convicted occurred prior to his employment with the Carrier, he was nevertheless convicted and sentenced while an employe (See Third Division Award 21949). The organization contends that as the sentence was amended by the Court to four years suspended sentence and two years on work release, Carrier should have permitted Claimant to return to work under the Court administered program. Given the seriousness of the crime and Claimant's relatively brief tenure with the Carrier, the matter of permitting a convicted

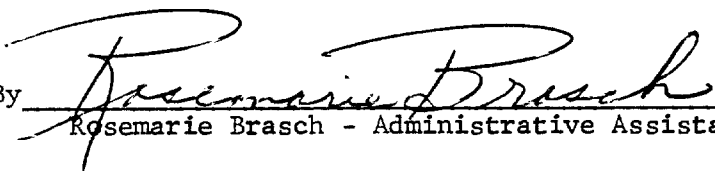
employee to participate in a Work Release program by continuing to work for the Carrier remains, in the opinion of this Board, a matter of discretion for the Carrier, and this Board will not disturb the Carrier's determination here not to continue to employ Claimant.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of June, 1983.