

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

(International Association of Machinists and
(Aerospace Workers
Parties to Dispute: (
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation violated the Controlling Agreement, Rules 3-C-6 and 8-I-1 by removing Machinist Billy Wansley, Employee Number 539348, from the seniority roster.
2. That, accordingly, Machinist Billy Wansley be returned to the service of the Consolidated Rail Corporation with all seniority rights unimpaired.

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 employes 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 March 12, 1982, furloughed Machinist Billy Wansley, the Claimant, was issued a notice he was the automatic bidder on Bulletin #J-47 and would have ten (10) days to accept the assignment under Rule 3-C-6. By letter of March 23, 1982, the Claimant's Attorney wrote the Carrier and indicated the Claimant wished to accept the job, but was in the State Correctional Institute serving a sentence of two to five years. The Attorney offered hope the Claimant would be eligible for pre-release within two to three months. The Carrier was requested to keep the Claimant's employment status intact along with his seniority pending the pre-release. This request was denied by the Carrier on April 11, 1982.

Rule 3-C-6 states:

"Employees furloughed must keep their employing officer advised of any change in their current address. Employees failing to report for duty for positions expected to be of more than sixty (60) days duration, within ten (10) calendar days after a Certified U. S. Mail notice is mailed to the last recorded address, will forfeit all seniority, unless they present sufficient proof that circumstances beyond their control prevented such return."
(Emphasis added.)

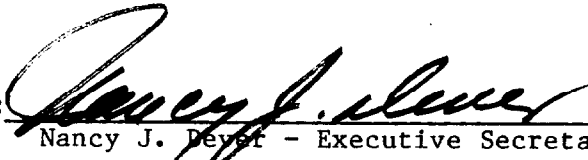
The Organization takes the position the Claimant's situation should be classed as circumstances beyond his control. Accordingly, the essence of this case turns on the answer to whether or not incarceration for a criminal offense is an absence beyond the control of the Claimant. This Board notes prior disposition of such absences held that an employee who puts himself in such a position cannot be considered as unavoidably detained. Awards 7578 and 8315 held the Carrier had no obligation to waive Agreement Rules under such circumstances.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of April 1986.