

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

(Lester Dotson  
Parties to Dispute: (  
(Southern Railway Company

Dispute: Claim of Employees:

Claim on behalf of Carman L. Dotson, that he was unjustly dismissed from service on August 13, 1984. Accordingly, that the Carrier be ordered to restore Carman Dotson to service upon his release from incarceration.

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 waived right of appearance at hearing thereon.

Claimant was employed by the Carrier as a Carman at Inman Yard, Atlanta, Georgia. He last worked his regular assignment on June 14, 1984. Investigation by Carrier's Police Department showed that Claimant had been arrested and incarcerated, charged with first degree murder, accused of having murdered his wife. On July 5, 1984, Claimant was cited to a formal Investigation, charged with "failure to protect your regular assignment." The Investigation was originally scheduled for 1:00 P.M., July 12, 1984. After several agreed-upon postponements, the Investigation was held on August 9, 1984. Claimant, due to being incarcerated, was not present at the Investigation; however, two Union Representatives were present on Claimant's behalf.

In the Investigation there was no dispute that Claimant had been absent from his job since June 14, 1984, due to being incarcerated. On August 13, 1984, Claimant was notified of his dismissal from Carrier's service.

In the handling of the dispute on the property, it was developed that on August 20, 1984, Claimant appeared before a Fulton County Superior Court Judge, entered a plea of guilty to a charge of voluntary manslaughter, and was sentenced to twenty years in State Prison.

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Award No. 11128  
Docket No. 11228-I  
2-SOU-I-CM-'87

This Board has held in numerous Awards that incarceration is not a valid excuse for an employe failing to protect an assignment. (Second Division Awards Nos. 1508, 4689, 6606; Third Division Award No. 19568.)


The Claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of January 1987.