

The Second Division consisted of the regular members and in addition Referee Ronald L. Miller when award was rendered.

PARTIES TO DISPUTE: ((International Brotherhood of Firemen and Oilers
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM:

1. That in violation of the current Agreement, Hostler Laborer, K. Montgomery, Gary, Indiana, was unfairly dismissed from service of the Elgin, Joliet and Eastern Railway Company, effective January 16, 1986.

2. That accordingly, the Elgin, Joliet and Eastern Railway Company be ordered to make Mr. Montgomery whole by restoring him to service with seniority rights, vacation rights, and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 6% annual interest; with reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service; and the mark removed from his record.

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 employees 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.

The Claimant was recalled from furlough on October 14, 1985. In accordance with the seniority system established by the Carrier and the Organization, Claimant was assigned to a vacant combination relief position. This position required Claimant to work on Saturdays. Because of his religious convictions and his duties as a minister of his church, Claimant informed the Carrier that he would not work Saturdays. In fact, subsequent to his recall, Claimant absented himself and failed to protect his assignment on twelve (12) consecutive Saturdays. Following a formal investigation, Claimant was dismissed from employment with the Carrier on January 16, 1986. The Organization contends that the dismissal is neither warranted nor justified, and is extreme and excessive discipline.

The record is clear that Claimant had been warned of the adverse consequences of his not protecting his job assignment, including the assignment of lesser discipline (demerits). Nevertheless, Claimant persisted to absent himself from regularly assigned Saturday work.

Prior to his last furlough and recall, the Carrier accommodated Claimant's desire not to work on Saturdays. However, after his recall in October, 1985, Claimant was assigned to a position (based upon his seniority) that provided no regular exemption from Saturday work. Additionally, trading off Saturday work with other employees was no longer feasible.

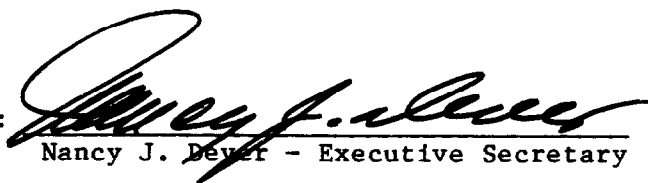
Claimant was placed in this dilemma through the operation of the Agreement's seniority system. The Carrier is not authorized by the Agreement, nor required by Civil Rights Law, to circumvent the valid seniority system to accommodate Claimant's religious beliefs. Furthermore, no provision of the Agreement or relevant Civil Rights Law requires the Carrier to bear undue economic hardship in order that Claimant can work less than the regularly scheduled assignment or to pay overtime to other employees in order to cover Claimant's assignments on Saturdays. The dismissal of Claimant was not arbitrary, unjust, capricious or an abuse of managerial authority. Claimant did not protect his job assignment.

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 6th day of July 1988.