

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13650
Docket No. 13476-I
01-2-99-2-70**

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Juan Diego Diaz
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Mr. Diaz requests that the Board reinstate Mr. Diaz to his normal position of employment with back pay and back medical benefits.”

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 were given due notice of hearing thereon.

The Claimant was a Carman working at Hinkle, Oregon. On August 13, 1997, the Claimant pled guilty to possession of firearms and was sentenced to 13 months in jail. On the day the Claimant was to report to jail (September 25, 1997), the Claimant requested a leave of absence from the Carrier indicating that he would be in jail for 13 months. The Carrier denied the request. As a result of his incarceration, the Claimant thereafter failed to report to work.

Notice issued on October 2, 1997 charging the Claimant with absenting himself from his assignment without authority beginning September 28, 1997 due to his felony

conviction and incarceration. After Hearing in absentia on October 29, 1997, the Claimant was dismissed by letter dated November 17, 1997.

Substantial evidence supports the Carrier's determination that the Claimant was absent from his assignment, which is a violation of Carrier Rule 1.15. The Claimant was also guilty of a felony, which violates the Carrier's Code of Operating Rule 1.6.

Under the circumstances, particularly given the seriousness of the demonstrated misconduct, we cannot say that dismissal was arbitrary.

With respect to the Carrier's denial of the Claimant's request for a leave of absence while he was in jail, the Carrier's denial of that request violated no Rule. Nor was the denial of such a request arbitrary. Nor do we find that the Claimant was entitled to a delay of the disciplinary proceedings for the period that he was incarcerated.

In light of the result, the other arguments raised by the Carrier are moot.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 11th day of December, 2001.