Award No. 12993
Docket No. MW-12475

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

FLORIDA EAST COAST RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective Agreement when it refused to grant Laborer J. A. Bussey a hearing as was requested in conformance with the provisions of Rules 11 (e) and 13.

(2) J. A. Bussey now be paid for all time lost from November 27, 1959 until he was restored to service on January 15, 1960 with seniority, vacation and pass rights unimpaired.

OPINION OF BOARD: During the latter part of September, 1959, Laborer J. A. Bussey, was arrested in Pompano Beach, Florida. When his case came to trial on October 30, 1959, he was sentenced to thirty-seven days in jail which the record quite conclusively discloses was for the offense of driving while intoxicated. He made no arrangement to protect his job and his foreman prepared a report showing the last day Claimant worked was October 29, 1959. Claimant after having completed serving part of his sentence and having been released from jail reported to his foreman who informed him that he had forfeited his seniority rights by being absent without proper leave.

On December 4, 1959, Claimant requested of his foreman that he be furnished with a written statement, advising him of the reason for his employment relationship having been terminated. The foreman thereupon gave him the following note, dated December 4, 1959:

"J. A. Bussey was laid off on account not being able to protect job."

Claimant notified the Roadmaster at New Smyrna Beach, Florida, on December 8 that he had requested his foreman to permit him to return to work but was informed that he had lost his rights by being absent without leave. On December 8, 1959, the General Chairman wrote the Roadmaster requesting an investigation in accordance with Rule 11 (e) of the Agreement—a discipline rule. The request for hearing was denied by the Carrier who maintained that Claimant severed his employment relationship under the pro-

visions of Rule 27 of the Agreement by his absence from duty without proper authority and that removal from service for failure to comply with the provisions of Rule 27 neither constitutes discipline nor does it entitle an employe to a hearing under Rule 11 — the Discipline Rule.

In answer to Carrier's contention Claimant alleges that his absence from service was involuntary and, therefore, he had not severed his employment relationship.

It may well be that Claimant was involuntarily held in jail but such was the consequence of his own conduct and nothing the Carrier had anything to do with. Driving while intoxicated was a voluntary action on the part of the Claimant. This and this alone was the cause of his predicament and he was, consequently, not excused from abiding by the provisions of Rule 27. See Award 6572 (Wyckoff); First Division Award 12021 (Johnson); First Division Award 15763 (Carter).

An employe removing himself from a Carrier's service by his own voluntary act cannot be held to have been discharged from such service by Carrier as a disciplinary act. Having arrived at this conclusion, it is unnecessary for us to discuss the question as to whether a request for hearing was timely made under Rule 11 (e) of the Agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1964.