

Award No. 18816
Docket No. TE-19185

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas L. Hayes, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC

NORFOLK AND WESTERN RAILWAY COMPANY
(Involving employes on lines formerly operated
by the Wabash Railroad Company)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Norfolk and Western Railway (Western Region), T-C 5807, that:

1. Carrier violated the Agreement between the parties when it arbitrarily, capriciously, and with abuse of discretion, suspended Telegrapher B. J. Morgan from service for twenty (20) days without cause.
2. Carrier shall, as a result, compensate B. J. Morgan for all wages lost as a result of the improper suspension, and clear his service record of the discipline assessed.

CARRIER DOCKET: TC-STL-70-2 101.22

OPINION OF BOARD: Telegrapher B. J. Morgan, who had been employed by Carrier for ten years, failed to report for duty to protect his Relief Assignment beginning at 8:00 A.M. on March 13, 1970 and at 8:00 A.M. on March 14, 1970.

Claimant Morgan was detained in the St. Louis City Jail on the night of March 12, 1970, and was not released until the morning of March 14, 1970. While in the jail, Claimant asked permission to make a telephone call to notify his superior officer that he was in City Jail and would not be able to protect his work assignment until released. When this request was denied, Claimant asked employees of the jail to so notify his superior officer, but they did not do this.

Carrier contends that Claimant's absence from duty without obtaining permission is in violation of Rule 404, which provides that "Employes must not absent themselves from duty, or charge off with another for a trip or part of a trip, or day, without obtaining permission from their superior."

A somewhat similar case cited by the Organization was considered in Award No. 12666 (Nathan Engelstein, Referee) and there as here Claimant

was detained by police and not allowed to notify Carrier that he was unable to report for work.

However, in the cited case the record indicated that the Claimant was not responsible for the situation which led to his detention at the police station, and it was clear that he was guilty of no wrongdoing. This differs from the case now before the Board in which Claimant, through his representative, declined to give any explanation regarding his detention.

Where there is an apparent violation of Rule 404 by a Claimant who is incarcerated and unable to notify Carrier of his inability to report to work, in order to be relieved of the consequences of such violation Claimant must have a plausible explanation of events that might lead a reasonable man to deduce that incarceration was not primarily the result of Claimant's own wrongdoing. No such explanation was ever furnished the Carrier. We do not mean to suggest here that the burden imposed on Claimant at the hearing must be so great as to amount to proof beyond a reasonable doubt or proof by a preponderance of evidence, but mere silence on the facts relating to arrest and detention is not enough to warrant a putting aside of the operation of the rule.

In the light of the facts in this case, we do not believe that the Carrier acted arbitrarily, capriciously, or with abuse of discretion, and we will not set aside the punishment chosen by it as a proper disposition of the case. Moreover, there were no procedural defects in the handling of the claim that would justify allowance.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 19th day of November, 1971.

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