

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23288
Docket Number MW-23425

Paul C. ~~Carter~~, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way ~~Employees~~
(The Denver and ~~Rio Grande Western Railroad Company~~

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

(1) ~~The~~ Carrier violated the Agreement when it improperly closed the service record of Section Laborer Ray Vigil (System File ~~D-5-79/MW-19-79~~).

(2) Ray Vigil be returned to service with seniority and all other rights unimpaired and he ~~shall~~ be compensated for all wage ~~loss~~ suffered."

OPINION OF BOARD: Claimant was ~~employed~~ as a section laborer. On January 10, 11 and 12, 1979, he was on leave of absence because of a death in his family. On January 15, 1979, claimant was incarcerated for driving while intoxicated. He requested a leave of absence until ~~his~~ release, ~~which~~ request was denied.

On February 16, 1979, the General ~~Chairman~~ was notified:

"This is to advise that the name of Section ~~Laborer~~ ~~Raymon~~ Vigil has been removed from the roster for being absent ~~without~~ permission over 10 working days.

"He last worked Jan. 8, 1979 at Southern Junction."

Appendix "O" of the applicable collective bargaining agreement provides in part:

"It is understood and agreed that an investigation will not be necessary when an employe absents himself from his ~~as-~~ ~~signment~~, without permission, for ten working days or more. Such employ-e may be dropped at the end of ten working days and the General Chairman will be notified of such action and the reason therefor."

The above provision is self-executing and ~~no~~ investigation is required when it is effective. Furthermore, the Board has held ~~in~~ numerous ~~in-~~stances that being in jail does not constitute absence for good cause. See Award 22383, and Second Division Awards Nos. 7262, 7777, 6606 and 1508.

Under the circumstances, claimant clearly forfeited his employe relationship by his actions in January and February, 1979.

While we do not consider that it has any bearing on the case, the record shows that Claimant made application for and was re-employed on June 26, 1979, and his application for employment was disapproved July 12, 1979, under Rule 7, which provides that the Company may accept or reject, an employe within sixty days, There was nothing irregular about this.

The Organization has failed to prove a violation of the Agreement and the **claim** will be denied.

As we have decided the dispute on **its** merits, we do not consider it necessary to pass upon the procedural Issues raised by the Carrier.

FINDING! 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **Third** Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at **Chicago**, Illinois, this 15th day of May 1981.

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