

5H
NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number '24760
Docket Number MS-24898

Paul C. Carter, Referee

(Ernest L. Postelwaite
PARTIES TO DISPUTE: (Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: "I, Ernest L. Postelwaite claim that I was dismissed improperly by management, I was released without an improper hearing and without appendix letter A-B-C.

I, Ernest L. Postelwaite was dismissed for the reason management set down that I was absent without permission.

I, Ernest L. Postelwaite had permission, through supervisor Martin Ransey, through my wife, on Oct. 20 due to I could not get to a phone until that Wednesday. He granted my wife permission through a phone **coverstation** which she called in my behalf.

Also, on May 8 and June 9 and 11th of 1981, I was also accused of the same failure to grant permission to be off.

But I furnished information that I was absent with permission on July 15, 1981 this was removed from my record.

The same mistake was made once by the company and also I believe that the same misunderstanding **occured** in this particular incident.

I acted in the proper manner to call off to my superior, through my wife, seeing as I was unable to at the time.

Also a number of other employees have been in the same position I am in and return to work with no time lost.

I feel I was treated unfairly by the Carrier and my superiors."

OPINION OF BOARD: Claimant, the petitioner herein, was previously employed by the Carrier as a track laborer. On October 20, 1981, claimant's wife telephoned claimant's Supervisor and informed the Supervisor that claimant would not be at work "until next season." The Carrier learned that claimant had been sentenced to ninety days in Knox County, Ohio, jail commencing on October 19, 1981, on charges of disorderly conduct and resisting arrest.

On November 5, 1981, Carrier's Manager Engineering wrote the claimant:

"The Carrier has been informed and itself determined that you have been convicted of Disorderly Conduct and Resisting Arrest, and are now serving a ninety (90) day sentence in the Knox County jail commencing on October 19, 1981.

Inasmuch as the Carrier does not grant leaves of absence for such purposes, you are absent without permission of the Carrier and accordingly forfeit your seniority in the Maintenance of Way Department of the Baltimore and Ohio Railroad Company for failure to protect same."

Numerous awards of this Board have held that confinement in jail does not constitute unavoidable absence for good cause. See Awards Nos. 24606, 22863, 21228 and others cited in the latter Award. Further, we find nothing requiring the Carrier to grant leaves of absence for such purposes. The Carrier was correct in its conclusion that claimant forfeited his seniority in the Maintenance of Way Department. The claim will, therefore, be denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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

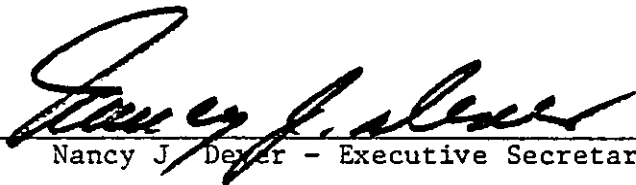
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April, 1984.

