

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 25518
Docket Number NW-25515

Paul C. Carter. Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(Seaboard System Railroad

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

(1) The dismissal of Machine Operator D. G. Fry for alleged failure to protect your assignment on April 7 and 8, 1982, and violation of Paragraph 5 of Rule 'G' was excessive and without reasonable cause [Carrier's File 12-27(83-4) J2].

(2) The claimant shall be reinstated 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 machine operator by the Carrier on that portion of the Railroad formerly known as the **Monon**, and was headquartered at LaFayette, Indiana.

During the evening of April 6, 1982, Claimant, along with a friend, visited a local bar at West LaFayette, Indiana. While at the bar, Claimant engaged in a physical altercation with another patron, who was identified as an Indiana State Police Officer. After returning to his table, Claimant was approached by the Police Officer, accompanied by a fellow Police Officer, was arrested and taken to jail. Claimant did not protect his assignment on April 7 and 8, 1982, nor did he notify any supervisory personnel of his predicament. When he returned to work on April 9, 1982, he advised his Foreman that the reason for having been absent from work on April 7 and 8, 1982, was due to being in jail.

On April 22, 1982, Claimant was notified:

"You are hereby charged with failure to protect your assignment on April 7 and April 8, 1982, and being off without permission from proper authority from your position of Backhoe Operator in Gang 109 presently working at LaFayette, IN.

"You are also charged with violation of Rule G, Paragraph 5, of the Rules and Instructions of the Maintenance of Way Department, which reads as follows: 'Employees must maintain good moral character and avoid violations of the law, and failure to do so will be subject to dismissal.' This violation is a result of your being found guilty of battery on police officer, resisting law enforcement and given one year jail time, which was suspended.

"Investigation of these charges will be conducted in the Superintendent's Conference Room located on the First Floor of the General Office Building, 908 West Broadway, Louisville, KY at 10:00 A.M. Friday, April 10, 1982."

The investigation was postponed to May 7, 1982. A copy of the Transcript has been made a part of the record. Following the investigation, Claimant was notified on May 11, 1982, of his dismissal from service. The investigation was conducted in a fair and impartial manner. None of Claimant's substantive procedural rights was violated.

There was substantial evidence presented in the investigation that Claimant's failure to protect his assignment on April 7 and 8, 1982, was due to his arrest and incarceration. Claimant testified that he was placed in jail about 11:30 P.M., April 6, 1982, and released at 1:30 P.M., April 8. The Foreman testified that he did not give Claimant permission to be absent, nor did he receive any notice that Claimant would not be at work on April 7 and 8, 1982. The record also shows that Claimant entered a guilty plea to charge of battery on Police Officer and to resisting law enforcement, for which he was fined \$50.00, plus \$50.00 court costs, and received a one year **suspended** jail sentence.

Carrier's Rule G, Paragraph 5, cited in the letter of charge, reads:

'Employees must maintain good moral character and avoid violations of the law, and failing to do so, will be subject to dismissal.'

Numerous Awards of this Board have held that incarceration is not a valid reason for an **employee** failing to protect his assignment. Further, we consider Claimant's violation of Rule "G", Paragraph 5, a serious offense under the circumstances here involved. Also, Claimant's prior discipline record was far from satisfactory.

There is no proper basis for the Board to interfere with the discipline imposed by the Carrier.

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.

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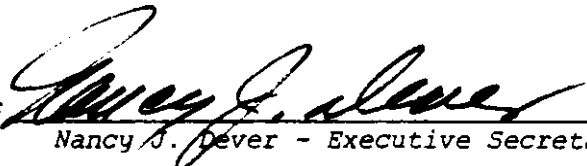
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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1985.