

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25620  
Docket Number MW-25426

Nicholas **Duda**, Jr., Referee

(Brotherhood of Maintenance of Way **Employees**  
PARTIES TO DISPUTE: (  
(The Chesapeake and Ohio Railway Company  
(Southern Region)

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

(1) The dismissal of B&B Mechanic G. W. Hager for allegedly being absent without permission beginning May 18, 1982 was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System File C-D-1458/MG-36141.

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered beginning July 6, 1982.

OPINION OF BOARD: Claimant, employed by the Carrier as a B & B Mechanic, was involved in a gun fight on May 15, 1982 with Police Officers at **Kenova**, West Virginia. During an exchange of gun fire, a **Kenova** Police Captain was shot and killed and Claimant was wounded and hospitalized at St. Mary's Hospital, Huntington, West Virginia. Claimant remained in the hospital under constant guard by Police Officers until May 18, 1982. Upon his release from the hospital on May 18, a warrant was served committing him to the Wayne County Jail on May 18, and charging him with first degree, premeditated murder of the Police Captain.

Claimant last performed work for the Carrier on May 14, 1982. After he had been absent without leave for six weeks, the Carrier sent him a letter on June 23, 1982 noting that Claimant was awaiting indictment on a first degree murder charge and had been incarcerated beginning May 18, 1982. The Carrier stated that it did not grant leaves of absence under Rule 4 for periods of confinement in jail and that therefore, Claimant had forfeited his seniority for failure to protect same. Claimant was released on bail on June 25, 1982. Subsequently he was convicted of the criminal charges and sentenced to life imprisonment in the State prison at **Moundsville**, West Virginia.

Under Rule 4, the Leave of Absence Rule, only **employees** who secure a proper, written leave of absence "will retain their seniority". The penalty for an **employee's** failure to obtain such leave of absence is forfeiture of seniority. Admittedly, Claimant did not request or secure such a written leave. Under the record, there was a reasonable basis for the Carrier to find that Claimant was absent for **an** extended period of time, without a leave, due to a voluntary act on his part and therefore, under the **self-**executing provisions of Rule 4, he forfeited his seniority. Regardless of his physical condition during his confinement, he was incarcerated for a 30 day period and failed to protect his assignment.

Numerous Awards of this Board have held that confinement in jail does not constitute unavoidable absence for good cause. see Award Numbers 24760, 21228, 12993. 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. 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 **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:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1985.

