NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26334
THIRD DIVISION Docket Number SG-27202

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company (WP)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company (Western Pacific).

On behalf of L. Middleton for reinstatement with pay for all time lost commencing April 2, 1985, and his record cleared of any disciplinary action which resulted in his dismissal on May 8, 1985. Carrier file: 013-220-WP-M."

OPINION OF BOARD: Prior to the occurrence giving rise to the dispute herein, Claimant was employed by the Carrier as a Signalman at Stockton, California.

The record shows that on February 14, 1985, Claimant requested a 120-day leave of absence. No reason was given for the request. On March 4, 1985, Claimant was notified by a Carrier official that the requested leave of absence was not approved, based on the work load at that time. In the meantime Claimant requested and was permitted to take vacation February 25 to March 15, 1985. Claimant did not report for work following his vacation period. He reported for duty on April 19, 1985, at which time he was notified of his suspension from service pending formal Investigation. On April 22, 1985, Claimant was notified to report on April 29, 1985, for Hearing:

> "...to develop facts and determine responsibility on charges of being absent from duty without proper authority from March 18, 1985 to April 19, 1985 indicating a violation of Rules Numbers 711, 712, of Maintenance of Way and Signal Rules."

The Hearing was conducted as scheduled, and a copy of the Transcript has been made a part of the record. We consider the Hearing on April 29, 1985, as timely and within the limits of Rule 68 as it was within ten days of the last day involved in the Notice of April 22, 1985.

Rules 711 and 712 of Carrier's Maintenance of Way and Signal Rules read:

> "711. Employes must report for duty at the designated time and place, attend to their duties during prescribed hours, and obey promptly instructions from the proper authority in matters pertaining to their respective branches of the service.

They must not absent themselves from duty, exchange duties with others, substitute others in their places, nor engage in other business which may interfere with the full discharge of their duty to the Company without proper authority.

712. Employes subject to call for their tour of duty must not absent themselves from their usual calling place without notice of those required to call them.

All employees must promptly give written and telephone notice of change in residence and/or telephone number to proper authority."

In the Hearing it was developed that Claimant had been arrested by Civil authorities for "Driving Under the Influence" and, as a result, had been sentenced to serve time in a correctional facility and did serve a total of 51 days. The Carrier contends that Claimant was absent without leave commencing March 18, 1985. On May 8, 1985, Claimant was dismissed from service.

It is clear from the record that Claimant's absence during the period involved in the Notice of Charge was due to his incarceration. This Board has held in numerous Awards that incarceration is not a valid reason for failing to protect an assignment. (Third Division Awards Nos. 24760, 24606, 22683, Second Division Award No. 8453, among others). We will adhere to that principle herein.

The Board also finds that under Agreement Rule No. 64, an employe does not have an absolute right to a leave of absence simply on request. The Rule specifies "When requirements of the service permit..." Claimant's request for leave of absence for 120 days was denied "Due to the heavy work load comtemplated in the next six months by the Signal Department, and lack of experienced signal personnel." When Claimant's request for leave of absence was denied, it was his responsibility to return to work, and he could properly be considered absent without leave commencing March 18, 1985.

Whether Claimant should be permitted to participate in the Employee Assistance Program must be left to the parties involved. (Third Division Award No. 25553, Second Division Award No. 11188).

We also note from the record that Claimant's prior disciplinary record was far from satisfactory. An employe's prior record may always be considered in arriving at the discipline to be imposed for a proven offense.

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 Employes involved in this dispute are respectively Carrier and Employes 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 8th day of June 1987.