

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27727
Docket No. CL-28014
89-3-87-3-579

The Third Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10200) that:

(a) Carrier violated the Agreement at Topeka, Kansas, when it removed Joseph H. Rodriguez Jr. from service as result of formal investigation held on May 14, 1986, and

(b) Joseph H. Rodriguez Jr. shall now be reinstated to Carrier's service with all rights unimpaired and compensated for all time lost from May 14, 1986 forward."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

At the time of the occurrence giving rise to the dispute herein, Claimant, with a seniority date of May 7, 1973, in the Information Systems Department Seniority District, was regularly assigned to a Machine Operator position, Topeka, Kansas.

On March 7, 1986, Claimant was notified to report for a formal investigation on March 24, 1986:

"...concerning report that you have failed to protect your regular assignment as Machine Operator commencing 3:00 PM, Monday, March 3, 1986, so as to determine the facts and place responsibility, if any, for possible violation of Rules 2, 13, 14, 15 and 16 of the General Rules for the Guidance of Employes, Form 2626 Standard."

The investigation was postponed and was conducted on May 14, 1986. Following the investigation, Claimant was dismissed from Carrier's service by notice dated May 30, 1986.

The Rules cited in the notice of March 7, 1986, were quoted in the transcript of the investigation, and are cited in the record before this Board. They will not be repeated here.

In the investigation of May 14, 1986, it was developed that Claimant was involved in a shoot-out with an off-duty Policeman of Topeka, Kansas, on February 27, 1986, and was wounded and hospitalized for a gun-shot wound. He was under police custody while hospitalized. He was released from the hospital on March 31, 1986, and released from police custody on April 18, 1986.

The Carrier contends that Claimant did not request permission to be off from his assignment commencing March 3, 1986, and was absent without leave.

The record before the Board also shows that Claimant was subsequently sentenced to a prison term of 3 to 20 years for his involvement in the shoot-out on February 27, 1986.

This Board has held that incarceration is not a valid excuse for not protecting an assignment. We consider Claimant's being in police custody in the same category as incarceration. The prison sentence was not a valid reason for a leave of absence.

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

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March 1989.