

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23288  
Docket Number MW-23425

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(The Denver and Rio Grande Western Railroad Company

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

(1) The Carrier violated the Agreement when it improperly closed the service record of Section Laborer Ray Vigil (System File D-5-79/MW-19-79).

(2) Ray Vigil be returned to service 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 section laborer. On January 10, 11 and 12, 1979, he was on leave of absence because of a death in his family. On January 15, 1979, claimant was incarcerated for driving while intoxicated. He requested a leave of absence until his release, which request was denied.

On February 16, 1979, the General Chairman was notified:

"This is to advise that the name of Section Laborer Raymon Vigil has been removed from the roster for being absent without permission over 10 working days.

"He last worked Jan. 8, 1979 at Southern Junction."

Appendix "O" of the applicable collective bargaining agreement provides in part:

"It is understood and agreed that an investigation will not be necessary when an employe absents himself from his assignment, without permission, for ten working days or more. Such employe may be dropped at the end of ten working days and the General Chairman will be notified of such action and the reason therefor."

The above provision is self-executing and no investigation is required when it is effective. Furthermore, the Board has held in numerous instances that being in jail does not constitute absence for good cause. See Award 22383, and Second Division Awards Nos. 7262, 7777, 6606 and 1508.

Under the circumstances, claimant clearly forfeited his employe relationship by his actions in January and February, 1979.

While we do not consider that it has any bearing on the case, the record shows that Claimant made application for and was re-employed on June 26, 1979, and his application for employment was disapproved July 12, 1979, under Rule 7, which provides that the Company may accept or reject an employe within sixty days. There was nothing irregular about this.

The Organization has failed to prove a violation of the Agreement and the claim will be denied.

As we have decided the dispute on its merits, we do not consider it necessary to pass upon the procedural issues raised 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A.W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1981.

