

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24353
Docket Number CL-24385

Paul C. Carter, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks
Freight Handlers, Express and Station Employees
{ Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9527) that:

1) Carrier violated the Agreement Rules, particularly Rule 21, when under date of May 23, 1980 it issued Notice wherein Mr. Joseph Veselko, Motor Truck Operator, Clinton, Iowa was dismissed from service account investigation held May 19, 1980, and

2) Carrier shall now be required to reinstate Mr. Veselko with all rights unimpaired and make him whole for all losses incurred from May 23rd, 1980 until the violation is corrected to include losses incurred in connection with fringe benefits withheld.

OPINION OF BOARD: Claimant was formerly employed by the Carrier as Motor Truck Operator at Clinton, Iowa. On March 24, 1980, he was sentenced to 200 days in jail on a morals charge. On May 13, 1980, Carrier notified claimant to report for investigation to be held on May 19, 1980, on the charge:

"Your responsibility for violation of Rule #14 of the Regulations and Safety Rules, effective June 1, 1967; specifically your failure to protect your assignment as motor truck operator on March 24, 1980, and all subsequent dates you were scheduled to work."

The investigation was conducted as scheduled, and on May 23, 1980, claimant was dismissed from service.

The Organization contends that Rule 21(a) of the Agreement was violated. It refers specifically to that portion of Rule 21(a) reading:

"....The investigation shall be held within seven calendar days of the alleged offense or within seven calendar days of the date information concerning the alleged offense has reached his supervising officer...."

The Organization contends that March 24, 1980, was the first day of the offense for which claimant was charged; that claimant's supervisor knew of the offense on March 24, and that the Carrier violated the Agreement by waiting until May 19, 1980, or forty-nine days to prefer the charge and fifty-five days for the investigation.

The Board finds no justification for the Organization's contention as to the timeliness of the charge or the investigation. Claimant's absence from March 24, 1980, to the date of the charge, May 13, 1980, was of a continuing nature. The charge was issued during the period of the absence, and the investigation was timely held after the date of the charge.

Claimant did not appear for the investigation; no request was made for postponement; nor did a representative appear in his behalf. In the investigation evidence was adduced that claimant did not protect his assignment between March 24, 1980, and May 13, 1980, nor did he have permission to be absent.

There is no dispute that claimant's failure to protect his assignment was due to being incarcerated. This Board has held in numerous awards that being in jail is not a valid reason for an employee's failure to protect his assignment. We agree with those awards.

There is no proper basis for this 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 Employee involved in this dispute are respectively Carrier and Employee 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: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of May 1983.

