

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25199
Docket Number MW-25413

James Robert Cox, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company

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

(1) The dismissal of Mr. R. A. Vering for alleged violation of 'General Rule "B", General Regulations 700 and 702, of Form 7908, and Rule 48(L) of the BMW Agreement' was without just and sufficient cause and in violation of the Agreement (System File 5-18-11-14-55).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: July 9, 1982, Claimant was arrested while working on the surface-lining gang between Marysville and Beatrice, Nebraska and charged with two felonies--rape and assault with intention to commit a felony. When he didn't make bond, he was jailed, and subsequently charged with kidnapping, aggravated sodomy, sodomy and unlawful restraint. Following a trial, he was acquitted November 22, 1982.

Before the acquittal, July 9th, Claimant Vering had been dismissed from the service of the Union Pacific Railroad for violation of Rule 48 (L). Thereafter, his doctor recommended that he be given a six-month leave of absence due to extreme stress. July 21, 1982, Vering, who had a service date of March 1973, requested a leave of absence through July 12, 1983.

Under Rule 48 (L), employees need not be granted hearings prior to dismissal under circumstances when, among other things, they are caused to involuntarily leave their job as a result of apprehension by civil authorities.

The Hearing initially scheduled for August 2, 1982 in Lincoln, Nebraska was, upon request of the Brotherhood Assistant Chairman, postponed for a week and, to facilitate Vering's attendance, rescheduled for Marysville, Kansas, a town where Vering made his home. Vering, however, did not appear at the hearing. It was indicated that he was "under a doctor's care." No evidence was presented that he was still in jail or unable to attend.

The Organization had made a request for a continuance prior to the beginning of the Hearing and strongly objected to continuing with the Hearing and the lack of opportunity provided Claimant to attend.

Mr. Vering was charged with violation of several Rules including General Regulation 700, which reads that employees will not be retained in service who are "... insubordinate, dishonest, immoral, ... or who do not conduct themselves in such a manner that the Railroad will not be subject to criticism and loss of good will..." and General Regulation 702 which stipulates that employees "... must not absent themselves from duty, exchange duties, or substitute others in their place without proper authority."

The evidence indicated that, following his July 9th removal from service, Mr. Vering did not report back to work or contact the Carrier concerning his absence.

Mr. Vering had, in February, 1977, been arrested for intimidating and threatening a prosecution witness. This charge was amended to assault and he was sentenced to 30 days in jail, then placed on probation for a year. In July, 1977, he was arrested on four felony counts associated with narcotics and dismissed from the service for violation of Rules 700 and 702 July 29, 1977. He had been sentenced in December, 1977 to one to three years upon pleading guilty to two narcotics counts.

Prior to 1977, Claimant had been terminated in May, 1974 for violation of Rules 700 and 702, reinstated in July, 1974, but again dismissed in August, 1976, with reinstatement in October, 1976.

Following the August 10, 1982 Hearing, Claimant was again dismissed from the service of the Union Pacific Railroad.

The Board finds that the Carrier had cause to terminate Claimant in August, 1982 for repeated Rules violations.

The gravamen of Rule 702 violation is absence without authority. The fact that Claimant was subsequently acquitted of the charges which brought about this absence does not excuse the absence. Past violations of the same Rule as well as the fact that Claimant had been terminated on four prior occasions and reinstated without backpay do not allow for any mitigation of the discharge.

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;

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;

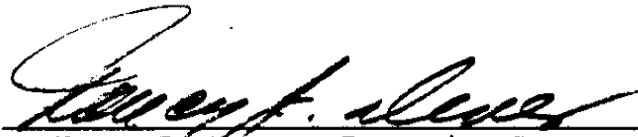
That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

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 11th day of January 1985.