

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26469  
Docket Number MS-27157

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Joseph C. Cooper  
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"CR-1941 Forfeiture of Seniority due to Absenteeism.

The reason for my absenteeism was because I was incarcerated. There was no prior notice to my incarceration; I had no way to notify Conrail of my circumstances. When I went before the magistrate for arraignment, I had not expected to be incarcerated that same day. I was taken to Camp Hill Correctional Institution directly from the magistrate and had no contact with anyone outside of the institution while undergoing psychiatric evaluation and observation for 60 days.

Due to the above circumstances - beyond my control - I could not notify my employer of absenteeism or reason for it. It is because of these circumstances I hereby request reconsideration of my forfeiting my seniority and ask to be put back on the roster, as I should be up for parole anytime.

Thank you for consideration in this matter. I can only hope for a better outcome now that I have been able to explain my deplorable circumstances."

OPINION OF BOARD: The record shows that Claimant's seniority as a Maintenance of Way Employee was terminated by Notice from the Carrier's Division Engineer to Claimant dated October 18, 1985:

"You have been absent over fifteen (15) consecutive days beginning October 1, 1985 without receiving permission from your supervisor, which is considered unauthorized absence and a violation of Rule 28, paragraph (a) and (b) of the applicable agreement.

Therefore, you have forfeited all seniority and your name has been removed from the roster."

Rule 28, paragraphs (a) and (b) of the Collective Bargaining Agreement provide:

"(a) An employee unable to report to work for any reason must notify his supervisor as soon as possible.

(b) Except for sickness or disability, or under circumstances beyond his control, an employee who is absent in excess of fourteen (14) consecutive days without receiving permission from his supervisor will forfeit all seniority under this agreement. The employee and the General Chairman will be furnished a letter notifying them of such forfeiture of seniority. The employee or his representative may appeal from such action under Rule 27, Section 3."

Claimant contends that his absence was due to being incarcerated by civil authorities. The issue presented here is practically identical to the issue in Award No. 31 of Public Law Board No. 3514 involving the same Carrier, the Brotherhood of Maintenance of Way Employees, and the same Agreement Rules. The Findings in the Award were:

"Rule 28 (b) unambiguously provides that an employee shall forfeit his seniority if absent from his assigned position in excess of fourteen consecutive days.

The record establishes that claimant was in fact absent from his assigned position for more than 14 consecutive days. His absence was due to 30-day incarceration by civil authorities for drug-related violations.

Confinement in jail does not constitute unavoidable absence or provide a valid basis for an exception to Rule 28. See Third Division Awards 24606 and 22868, e.g. It was claimant's own fault that he was not able to protect service for Carrier during the lengthy period he was absent."

In the Award the claim was denied.

We do not find Award No. 31 of Public Law Board No. 3514 to be in palpable error. We will follow it here and deny the present claim. Also, this Board has held on numerous occasions that incarceration is not a valid reason for failing to protect an assignment. Third Division Award Nos. 24606, 22868, 21228.

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

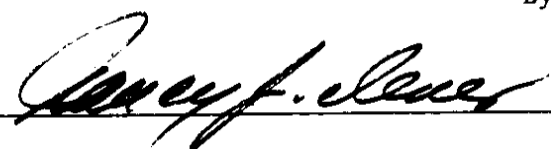
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: \_\_\_\_\_

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of September 1987.