

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29778
Docket No. SG-29787
93-3-91-3-162

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Norfolk and Western Railway Company

STATEMENT OF CLAIM: "Claim on behalf the General Committee of the Brotherhood of Railroad Signalmen on the Norfolk and Western Railway Company (N&W):

- A. Carrier violated the rules of the Signalmen's Agreement, in particular Article VII, when, on March 22, 1990, Carrier dismissed Mr. Poole without just and sufficient cause.
- B. Carrier should now be required to reinstate Mr. Poole to his former position as Signalman on Signal Gang 591 with all rights and benefits unimpaired; compensate him for all time lost from March 9, 1990, until he is reinstated; reimburse him for any expenses incurred; pay him for any time used in traveling outside regular working hours because of Carrier's action, and clear his personal record of any reference to this matter." Carrier file SG-ROAN-89-26. BRS Case No. 8223-N&W.

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 employe 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 were given due notice of hearing thereon.

This case involves a nine-year Signal department employee who became involved in an off-duty situation in which he was charged and pled guilty in the Court of Common Pleas of Ashland County, State of Ohio, to Gross Sexual Imposition on a minor female. The Court sentenced the employee to serve one (1) year in an appropriate penal institution. This sentence was issued and dated November 29, 1989.

The pertinent chronology of events as they relate to the case are as follows:

1. Claimant requested and was granted a one-day leave of absence from his Signalman's position on November 29, 1989.
2. On November 29, 1989, Claimant Poole requested a leave of absence for a period of 45 to 60 days for personal reasons. This request was received by Carrier on December 4, 1989, at which time it was denied.
3. By letter dated December 14, 1989, Claimant was instructed to appear for an investigatory hearing on December 22, 1989, on charges of absence without permission and conduct unbecoming an employee. By agreement of the parties, the hearing was twice postponed and eventually held on March 9, 1990, at which time Claimant was present, represented and testified on his own behalf.
4. By letter dated March 22, 1990, Claimant was notified of his dismissal from Carrier's service.
5. An appeal from the dismissal was initiated and progressed on Claimant's behalf by the representative Organization. Failing to reach a satisfactory resolution during the on-property handling of the appeal, it has come to this Board for final and binding adjudication.

The fact situation in this case is clear and uncontroverted. Claimant pled guilty in a Court of appropriate jurisdiction to the charges as made by the State. At the on-property hearing, Claimant repeated his guilty plea as made to the Court and advanced several pieces of communication from his lawyer, his clinical psychologist, his Pastor and his parents each of whom acknowledged that Claimant had, in fact, committed the offense with which he was charged, but pleaded for consideration by the Carrier to give him another chance to remain in their service.

On charges as made by the Carrier, there is more than substantial evidence that Claimant was guilty as charged. This Board has often ruled that incarceration in jail is not a valid excuse for absence from duty or a valid reason to receive a leave of absence. This Board is especially impressed with the logic and determination which was made in Fourth Division Award 2127 in which the following is found:

"Generally, it is true that Carrier's rules and discipline cannot properly extend to off-duty misconduct. Where, however, the acts, even though they occur on an employee's rest day and at his home, are of such a character as to destroy confidence in his basic integrity, self-control and judgment, a different rule will obtain. On the record before it, this Board does not feel that it can validly substitute its judgment for that of Carrier and finds that it must deny the claim. While an enlightened society may wish to treat medically and deal charitably with sick people who molest children, we cannot fairly require a carrier to accept the burdens involved solely because of an employment relationship."

It is indeed unfortunate that this nine-year employee sank into the situation which precipitated his dismissal. This Board, however, does not have authority to make moral judgments nor to grant equity or leniency. Where, as here, the facts are clear and unimpeachable, the Board cannot say that the Carrier's findings and decision exceeded the limits of discretion which the Carrier possesses in the administration of discipline. We will not disturb the Carrier's actions here.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 20th day of September 1993.