

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30864
Docket No. CL-30970
95-3-92-3-844

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

PARTIES TO DISPUTE: (Transportation Communications
(International Union
(
(CSX Transportation, Inc. (former
(Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM: "Claim of the System Committee of
the Union (GL-10883) that:

- (A) The Carrier violated Rule 27 and others of the Clerical Agreement when on the date of August 9, 1991, Clerk D. G. Dailey was dismissed from the service of the Carrier.
- (B) The Carrier shall now restore Dana G. Dailey to service with all seniority rights, and other rights accruing unimpaired.
- (C) Claimant shall be compensated at an amount equal to what he would have earned, including daily wages, subsequent increases, overtime, and holiday pay had he not been dismissed. The Carrier shall also clear D. G. Dailey's record.
- (D) The Carrier shall reimburse Claimant for any medical expenses for himself and for his dependents to the extent of coverage had he been working. Claimant shall also be reimbursed for all premium payments he incurred to purchase substitute health and life insurance. Further, in the event of Claimant's death, pay his estate the amount of monies due and the amount of life insurance."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant, a Relief Car Distributor in the Baltimore, Maryland, General Offices, had a seniority date of November 3, 1977. An Investigation was held on August 1, 1991, wherein Claimant was charged with unauthorized absence between June 15 and July 15, 1991.

The record demonstrates that the Claimant ran afoul of Maryland's crack-down on state residents operating motor vehicles registered outside of Maryland. His license had an improper address as well. In addition, his car's plates were expired Pennsylvania tags prompting an additional citation to be issued. He was arraigned after a half-day of incarceration and the initial bond of \$3500.00 was hiked to \$15,000.00 due to his non-domicile status in Maryland.

He could not make bail until July 9, 1991, having been detained with only \$.12 on his person. He did call off on June 14, but not for the ensuing month's time.

According to the Organization, the ensuing dismissal was harsh and uncalled for. Claimant did everything humanly possible given his circumstances.

The Carrier emphasizes that Claimant received proper notice of the Hearing and that same was fair and allowed the Organization to best represent the Claimant. It stresses that the call-off for June 14 did not fully explain the situation, because Claimant assumed he would be released later that same day. Carrier also argues that Claimant's past attendance record on the same job was poor.

The Carrier based its decision upon the record's showing of a failure to protect an assignment. We concur. The Claimant in maintaining that he was a "victim of the crackdown," has not established requisite proof that he was similarly victimized by the Carrier in terms of his contractual rights.

Although not able to meet the \$1500 needed to post the higher bail, Claimant testified that he could have met the \$350 bail originally set for him. Then he claims he only had \$.12 after he called off for June 14! It is also in the record that Claimant eschewed calling colleague friends because he did not want them to know about the charges he faced. The Claimant cannot have anonymity and help in preserving his assignment, which he knew had to be done. He received a fair Hearing and the penalty assessed is within expectations and issued in accordance with a preponderance of the evidence.

The Organization overlooks the fact that the Carrier made do without the Claimant for a month, and to this extent, it was a "victim" of a situation not of its own making.

Claimant cannot decry a foreseeable outcome (arrest) while running the risks he engaged over his drivers' license and plates. The record indicates there was apparently some money to post the first bond's premium and that amount (\$350) was enough to phone hundreds of people if needed.

The reliance upon or equation of the Claimant's status as that of a victim is not cogent.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 10th day of May 1995.