

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 32546  
Docket No. MW-32894  
98-3-96-3-130

The Third Division consisted of the regular members and in addition Referee John H. Abernathy when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees  
(The Denver Union Terminal Railway Company)

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Section Foreman D. A. Archuleta for alleged violation of ‘. . . Rules C, D, and L of the General Rules for Guidance of Employees of the Denver Union Terminal Railway Company.’ in connection with his failure to protect his assignment on April 3, 4, 5, 6 and 7, 1995 was arbitrary, capricious and on the basis of unproven charges (System File DUT-95-01).
- (2) As a consequence of the aforesaid violation, the Claimant shall be returned to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.”

**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.

Between June 1982 and December 1990, Claimant was arrested and found guilty on five separate occasions of driving under the influence (DUI) of alcohol. On the first four of these occasions he was allowed to participate in a work release program with the Carrier. On the fifth occasion, Carrier denied his request for work release and gave him a written warning that a future conviction for DUI would result in termination.

During February/March 1995 Claimant was arrested, tried and convicted of DUI and sentenced to one year in the Adams County Jail and, after that year was served, to six months in the Denver Jail. Carrier denied Claimant's request to participate in a work release program. Claimant began his incarceration on April 1, 1995.

After Claimant missed five days of work, Carrier sent him a letter charging him with being in violation of Rules C, D and L and informing him of a Hearing on those charges. That Hearing was held on April 13, 1995 with the Claimant in absentia. Claimant's representative also failed to attend this Investigation. Carrier terminated Claimant on April 18, 1995.

The Organization contends that there are two procedural defects of sufficient severity as to require that this claim be sustained. The Organization was not given notice of the Hearing and Carrier failed to deny the claim and appeal in a timely manner. In addition the Organization contended that Claimant failed to receive a fair and impartial Investigation and that Carrier failed to prove the charges levied against Claimant.

This Board finds that Carrier sent the Notice of Hearing to the Claimant, thereby fulfilling its notification requirement. Claimant had time to secure the presence of a representative of his choice. He did not do so. Carrier is not required to delay scheduling an Investigation until Claimant was released from jail. It was not improper to hold the Investigation in absentia.

This Board finds Carrier failed to deny claim in a timely manner. The Organization's claim was filed on May 18, 1995. The Carrier admitted that it failed to deny this claim until July 31, 1995, beyond the 60 day response time required in Rule 19. Therefore the Board finds that the Claimant should be returned to duty within ten

days after his release from jail with seniority and other rights unimpaired. Jail time is to be considered leave without pay.

**AWARD**

Claim sustained in accordance with the Findings.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

Dated at Chicago, Illinois, this 29th day of April 1998.