NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22860

THIRD DIVISION Docket Number CL-22985

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
(
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8878) that:

(1) Carrier violated the rules of the effective Clerk-Telegrapher Agreement when, on December 7, 1977, it arbitrarily and unjustly dismissed Elevator Operator Schelly H. Forrester from service of Carrier, and

(2) As a result of such impropriety, Carrier shall reinstate Mr. Forrester to its service with all rights unimpaired and compensate him for all wage losses suffered since October 4, 1977, the date last held from Carrier's service.

OPINION OF BOARD: Claimant had been in Carrier's service about three years and four months and held a regular assignment as an Elevator Operator in Carrier's Central Building at Baltimore, Maryland, hours 10:00 A.M. to 7:00 P.M., Monday through Friday.

On November 22, 1977, claimant was given written notice to attend an investigation at 10:00 A.M., November 30, 1977. He was charged with failure to properly protect his assignment, absence without permission and conduct unbecoming an employe during the period September 30, 1977, through October 14, 1977, and from November 1, 1977, through November 21, 1977.

The investigation was held as scheduled and a copy of the transcript has been made a part of the record. A review of the transcript of the investigation shows that none of claimant's substantive procedural rights was violated. The Board does not agree with the contention of the Organization that the investigation was not held withinthe time limits of Rule 47. Claimant was actually withheld from service by the Carrier beginning November 22, 1977, and the investigation was conducted on November 30, well within the time limitations of Rule 47 (a-l).

Testimony given in the investigation shows that on Friday, September 30, 1977, claimant called his supervisor, the Building Superintendent, and informed him that he (claimant) had to attend court that day and could not report for work. Claimant called his supervisor on Monday morning, October 3, 1977, and advised that he was in Baltimore County jail.

Claimant stated in the investigation that he had been arrested for a traffic violation, driving on a revoked license, and was sent to the Baltimore County Work Release Center, and that he was actually incarcerated in jail on September 30, when he went to court. It was also developed that the period between October 14 and November 1, 1977, was claimant's scheduled vacation period. Claimant did report on October 5, 1977, about five minutes before his assigned starting time, but was not permitted to work due to the short notice and arrangements having been made to fill his position.

Nothing further was heard from claimant until November 18, 1977, when he called his supervisor and advised that he had been released from jail on November 16 and would report for work soon. He actually reported for duty on November 22, 1977, when he was handed the notice to appear for investigation on November 30, 1977, and advised that he would be held from service pending the hearing.

Many awards of this Board have held that confinement in jail does not constitute unavoidable absence for good cause. See Awards 6572, 12993, 21228 and others cited in the latter award.

The Organization's contention that claimant's failure to protect his assignment was caused by Carrier's failure to participate in a work release program lacks validity. Carrier's officials are responsible for the decision to participate in such programs and the Carrier is under no contractual or legal obligation to do so. See Second Division Award No. 8315.

The claimant herein, by his own fault, caused himself to be in no position to properly protect his assignment on the dates involved.

The record before the Board also shows that claimant's prior work attendance record was far from satisfactory. He was the claimant involved in our Award No. 22239.

There is no proper basis for this Board to interfere with the discipline imposed by the Carrier.

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 Employes involved in this dispute are respectively Carrier and Employes 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: A. W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 30th day of May 1980.