

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24606
Docket Number MW-24855

Paul C. Carter, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employes**
(Union Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it improperly closed the service record of Carpenter R. G. Tibbetts (System File 4-Z-11-14-55).

(2) Carpenter R. G. Tibbetts be returned to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant was a carpenter in Carrier's Bridge and Building Gang No. 7461, with an employment date of May 24, 1978. He was absent from his position from August 24, 1981, until September 1, 1981. On September 1, 1981, Claimant was advised by the Bridge and **Building** Supervisor:

"Because you were absent from your position as B&B Carpenter, on **B&B** Gang 7461 at **Hooper**, Washington, from August 24, 1981 until September 1, 1981, without authority in accordance with Rule **48(k)** of the current agreement with the Brotherhood of Maintenance of Way **Employes** and the Union Pacific Railroad Company which states the following:

'**Employes** absenting themselves from their assignments for five (5) consecutive working days without proper authority shall be considered as voluntarily forfeiting their seniority rights and employment relationship, unless justifiable reason is shown as to why proper authority was not obtained.'

Therefore we consider you have voluntarily forfeited your seniority rights and employment relationship with the company effective September 1, 1981."

On September 10, 1981, the Local Chairman of the Organization wrote Carrier's Division Engineer requesting a hearing, or investigation, to afford Claimant an opportunity to present reason for his absence from his assignment for the seven-day period. The request for a hearing was denied, but the Division Engineer offered to discuss the matter with the Local Chairman. The Organization agrees that an offer to discuss the matter was made by the Division Engineer, but contends that the Division Engineer failed to make himself available for such discussion. A matter of this kind, is, of course, outside the jurisdiction of this Board. we are sure that the Organization has means of pursuing such matters if it desires to do so.

Without detailing all the arguments pro and con, the record is clear that the reason for Claimant's absence for the seven-day period was because of his incarceration by civil authorities, having been arrested on August 23, 1981, for 'failure to appear' in connection with a prior arrest on a "DWI" charge.

Rule 48(k) of the Agreement provides:

"(k) **Employes** absenting themselves from their assignments for five (5) consecutive working days without authority shall be considered as voluntarily forfeiting their seniority rights and employment relationship, unless justifiable reason is shown as to why proper authority was not obtained.*

We agree with the Carrier that the rule is self-executing and that a hearing of any kind is not required when it is applicable. In recent Award No. 24413, involving the same parties, in which this Referee participated, we held:

"The Carrier contends that Paragraphs (k) and (m) of Rule 48 are exempt from the formal hearing requirements. The Board agrees with this interpretation. Rule 48(k) is self-executing. This interpretation is strictly in accord with the first sentence of Rule 48(a) of the Discipline and Grievance Rule, which reads:

'(a) Except as provided in Paragraphs (k), (l), and (m) of this **provisio**, an **employe** who has been in service more than sixty (60) calendar days, whose application has not been disapproved, shall not be dismissed or otherwise disciplined until after he has been accorded a fair and impartial hearing.'"

This Board has also issued numerous awards to the effect that confinement in jail does not constitute unavoidable absence or good cause. See Award No. 22868 and others cited therein.

In a "chronological summary" submitted to the Carrier by the General Chairman on July 8, 1982, some ten months after the notice to Claimant on September 1, 1981, it is stated:

"(4) On Sunday, August 23rd, Guy Werner notified Rick's foreman, J. L. Geiss, that Rick had been arrested, etc., and was being transported to Seattle to appear."

Even assuming that such notice was given to the foreman by Guy Werner (not identified by occupation or title), such notice could not be construed as constituting "proper authority" as referred to in Rule 48(k).

In its submission to the Board the Organization attempts to invoke Rule 48(1). We do not consider Rule 48(1) as having any application. Further, the record shows that no such contention was raised on the property, and it is well settled that issues and defenses may not be raised for the first time before the Board.

We find no violation of the Agreement by the Carrier, and the claim will be denied.

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 **Employee** 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

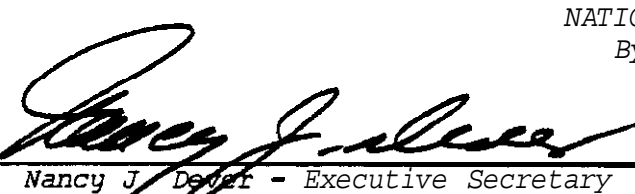
That the Agreement was not violated.

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 13th day of January 1984.