

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30994
Docket No. MW-31666
95-3-93-3-696

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

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

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

- (1) The dismissal of Track Subdepartment employee L. Claw for allegedly being absent without proper authority on November 30 and December 1 through 4, 1992 was arbitrary, capricious and in violation of the Agreement (System File D-187/930261).
- (2) The Claimant shall be reinstated to the Carrier's service with seniority and all other rights unimpaired, his record cleared of the charges leveled against him 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 waived right of appearance at hearing thereon.

Claimant was arrested November 29, 1992, and jailed on the strength of a warrant issued for a prior court date that he missed. He was in jail November 29, 1992, thru December 5, 1992.

On December 7, 1992, Claimant reported for work but was not permitted to begin. Instead, a letter dated December 17, 1992, was issued advising claimant that he had voluntarily forfeited his employment with the Carrier for absenting his assignment without proper authority on November 30, December 1, 2, 3 and 4, 1992.

Rule 48(k) is a voluntary forfeiture of seniority rule. If you are absent from your assignment for five consecutive work days without proper authority, Carrier accepts that you have voluntarily forfeited all your seniority rights, unless, of course, justifiable reason can be shown as to why proper authority was not obtained.

Apparently, Claimant's wife called in to advise her husband would not be at work, but did not identify herself or her husband.

Claimant, during the appeal attempted to explain that his jailing was not his fault. Carrier did some investigation of its own and said the reason he missed the court date for which the warrant was issued in this case was that he failed to keep the court informed of his whereabouts and his reason for being unavailable.

Furthermore, the Carrier stated even if Claimant was identified when his wife did call in, the reason for missing his assignment i.e. jail time, would not have been accepted as a justifiable reason for being off.

Under the circumstances, Carrier's actions were consistent with the meaning and intent of Rule 48(k). Claimant was absent five consecutive work days without a justifiable reason. He has voluntarily relinquished his seniority rights.

AWARD

Claim denied.

ORDER

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 26th day of July 1995.