



**Award No. 5901**

**Docket No. 5683**

**2-GN-CM-'70**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition referee Arthur Stark when award was rendered.

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION No. 101, RAILWAY EMPLOYEES'  
DEPARTMENT, A.F.L.-C.I.O.  
(CARMEN)**

**GREAT NORTHERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That the Carrier violated the Agreement when they unjustly suspended Carman Edward W. Winchell from the service of the Carrier for a period of thirty (30) days.
2. That accordingly, the Carrier be ordered to compensate Carman Edward W. Winchell for the time removed from service from November 30, 1966 to December 29, 1966 and this mark be removed from his service record.

**EMPLOYEES STATEMENT OF FACTS:** The Great Northern Railway Company, hereinafter referred to as the carrier, employed Carman Edward W. Winchell, hereinafter referred to as the claimant, at its car repair and inspection yard, Havre, Montana, with assigned hours of 7:00 A.M. to 3:00 P.m. with rest days of Saturday and Sunday.

On October 21, 1966, the claimant at approximately 10:40 A.M. contacted Assistant Car Foreman J. Harding requesting his permission to leave the job to take care of an emergency at his home. The foreman did not answer the claimant's request for permission to leave the job nor did he refuse to grant him permission. Foreman Harding then left the track where the claimant was working and did not return until after 11:00 A.M., the hour the claimant requested permission to leave the job.

On November 7, 1966, an investigation was held to establish facts and place responsibility in connection with claimant's absence without proper authority. As a result of the investigation, the claimant was suspended for thirty (30) days.

This dispute has been handled with all officers of the carrier designated to handle such disputes including the highest designated officer of the carrier, all of whom have failed to make satisfactory adjustment.

The agreement effective September 1, 1949 as subsequently amended is controlling.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

On October 23, 1966, Carman E. W. Winchell, Havre, Montana, was charged with being absent without proper authority on Friday, October 21, 1966. An investigation was conducted by Assistant Superintendent M. J. Sommers and Master Mechanic E. N. Roberson on November 7, 1966, following which Winchell was suspended for thirty days "for leaving the job without permission". Rule 702 provides in part that employes "must . . . attend to their duties during the hours prescribed . . . comply with the instructions from the proper authority . . ." and ". . . must not absent themselves from duty . . . without proper authority."

Testimony at the investigation was offered by Car Foreman J. J. Cech, Assistant Foreman Jack Harding and Carman Winchell. It may be summarized as follows:

**Car Foreman Cech:** On October 21 he instructed Assistant Foreman Harding that "no one was to be excused today without my permission account being swamped with bad order cars". Winchell reported for work at 7:00 A.M. that day but left before shift's end without his permission. This was not the first time Winchell had left early without permission. He had not talked directly to the employe about this, but I talked to the Assistant Foreman . . . that he was not to leave without my permission." During the period January-October 21, 1966, Winchell left early on eighteen occasions (including the day in issue), losing forty-four hours (four on October 21). Additionally, he had been absent on five days.

**Assistant Foreman Harding:** On October 21, at about 10:00 A.M., he told Winchell's partner, Stees, that he had a special job he wanted the two men to do. Stees replied that Winchell was going home at 11:00 A.M. Later, as he was walking up No. Two Track, Winchell walked by him and said that he was going home at 11:00 o'clock. He (Harding) offered no comment, but "kept right on with my business . . . I figured he probably had permission, or else he was going to walk off the job . . . and intended to check with him on the way back."

**Carman Winchell:** He had been employed by Carrier for 22 of his 38 years. He wanted to go home early, on October 21, to repair the water system at home. "It didn't seem like we were too busy that morning, so I waited until just about 11:00 o'clock before I contacted Mr. Harding." He told Harding he was going home. "He never gave me any direct answer like any other Friday, when I asked him and he never said no permission". He (Winchell) did not contact Cech. When Harding failed to give him a positive answer he accepted that as permission to leave. With respect to his prior record of 1966, he never walked off the job without receiving what he considered proper authority.

\* \* \*

Management, certainly, has the right to discipline an employe who walks off the job without seeking or obtaining permission, absent extenuating

circumstances. The question posed in this case here is what constitutes permission. A careful reading of the investigation transcript does not support Carrier's findings concerning Claimant's delinquency, in our judgment. Note the following:

1. Foreman Cech's orders that only he would excuse men on October 21 were not passed on to the employes and were not known to Claimant. Assistant Foreman Harding, who received the instructions, did not convey them to Claimant when the opportunity presented itself. Neither did Harding question Claimant as to whether he had talked with the Foreman.

2. The Assistant Foreman was aware, even before Claimant accosted him, that Winchell was planning to leave early. Still he said nothing. Moreover, Harding knew that Claimant planned to leave at 11:00 A.M. Yet he remained mute, although there was a strong possibility that he would not return until after 11:00 (which is just what happened).

3. There is nothing in the transcript of investigation about "standing orders" although, in its Ex Parte Submission, Carrier included a statement from Mr. Harding that "it is a standing order at Havre Car Department that Car Department personnel must receive permission from the Car Foreman, Mr. Cech, before being absent from duty. I did not feel that it was necessary to repeat these instructions, as he (Winchell) knew the procedure as well as I did." If this be the case, one may wonder, how to explain Foreman Cech's October 21, instructions to Harding that "no one was to be excused today without my permission. . ." (Emphasis added) And, if Harding intended to assign Stees and Winchell to a special job, why did he remain mum when Claimant announced his imminent departure?

4. Although not mentioned at the investigation, Carrier also refers to a 1964 letter to Claimant from Foreman Cech stating in part "you were instructed to contact me personally, whenever reporting off and also when reporting back for service. These instructions have not been complied with. I now find that you have been calling the Asst. Foreman in charge and reporting off. . . ." Yet this apparently concerned Claimant's penchant for remaining at home, rather than leaving work early. There is no evidence that, during 1966, he customarily checked with Cech rather than Harding before leaving early, and his testimony is to the contrary.

Claimant's prior record and attitude towards his job unquestionably left much to be desired. Nevertheless, prior misconduct becomes relevant only in light of a present infraction. Here, Claimant's conclusion that Assistant Foreman Harding's silence represented assent was not unreasonable. In fact, when the supervisor was asked, at the investigation ". . . when Mr. Winchell asked you or told you that he was going home, don't you think a positive action on your part at that time would have prevented this investigation?" he replied, "Yes, I believe so. If he had contacted me back he probably would have received a positive answer." Under these circumstances, since Management's decision that claimant violated Rule 702 was unfounded, there is no basis for sustaining its disciplinary penalty.

**A W A R D**

**Claim sustained.**

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

**ATTEST: E. A. Killeen  
Executive Secretary**

**Dated at Chicago, Illinois, this 17th day of April, 1970.**