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NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 6386  
Docket No. 6250  
2-FGE-CM-'72

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: ( Railway Employees' Department  
( A. F. of L. - C. I. O.  
( (Carmen)  
(  
( Fruit Growers Express Company

Dispute: Claim of Employees:

1. That under the controlling agreement, the Carrier improperly held Upgraded Junior Mechanic, W. W. James out of service from October 20, 1970 through March 25, 1971.
2. That accordingly, the Carrier be ordered to compensate Upgraded Junior Mechanic, W. W. James for all time lost during the aforesaid period and for any other benefits due him under the current agreement.

Findings:

( The Second 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 had been working at the Carriers' car building and repair facility at Alexandria, Virginia since November 1, 1965. The employee was absent from October 8, 1970 through October 19, 1970 and on October 23rd following a hearing, was discharged. Based on a request by the Organization, the Company exercised its right for leniency and reinstated the employee with full seniority and other benefits on March 23, 1971.

The following rules are relevant:

"Rule 17 (b) A reasonable amount of leave will be granted to employees when requested on account of sickness or business matters of importance to employees.

Rule 18

In case an employee is unavoidably kept from work he will not be discriminated against; an employee detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible."

Based on a reconstructed version of the hearing of October 23rd (there being no transcript) the parties both agree that Claimant phoned the office on October 8th during the day and told the clerk who answered that he was reporting off because his wife was in the hospital and that he could not get a suitable baby sitter. Later, on the evening of October 8 the Claimant phoned Foreman Spittle and reported the same information that he had to be off. Spittle was not his foreman, but Claimant claimed not to know his foreman's (McFall's) first name, address or phone number. The employee never made an attempt to call his foreman E. M. McFall directly. The employee was in the shop on October 13th to pick up his check but did not talk to any supervisor at that time claiming that his children were in the car at the time and he did not wish to leave them unattended. Claimant returned to work on October 20th at which time he was suspended pending the hearing.

The record contains substantiation of the hospitalization of employee's wife and also a history of substantial absenteeism by Claimant from 1967 through 1970, including over 43 days in 1970 and prior warnings and discipline for similar infraction. There also appear ten statements by employees, each reading as follows:

"During my years of service with the Fruit Growers Express Company at Alexandria, Virginia, Shop, the established practice for employees who are unavoidably detained from work is to telephone the Shop Superintendent's office and report the reason for not reporting to work. The report is made to any one who answers the telephone in the Shop Superintendent's office, chief clerk, timekeeper, clerk or the Shop Superintendent. There is no telephone in the Shops proper."

The Carrier claims that the employee was in violation of Rules 17 and 18 in that he failed to request a leave of absence and failed to notify his foreman as early as possible that he would be unavoidably kept from work. Specifically, the company claims that Rule 18 was violated because the employee did not notify his own foreman personally of his inability to report to work.

We find that the Claimant diligently attempted to report his absence by making two calls; one to the office to the customary and only supervisor's telephone; and the second call to the only supervisor he knew how to contact. Since he had good cause for his absence in the verified hospitalization of his wife and attendant problems, we find that his absence falls within the scope of Rule 18 and that Claimant complied with the requirements of that Rule.

Rule 17 (b) deals with requests for Leave of Absence on account of sickness or business matters of importance to employees. We find nothing in the record or in the Rules which would require an employee who is unavoidably kept from work to request a leave of absence. Hence we do not find Claimant has violated Rule 17(b).

It is clear that the Carrier gave heavy weight in its imposition of penalties to the prior absentee and attendance record of this employee. While not condoning a far from exemplary record, this Board has held in many cases that "...prior misconduct becomes relevant only in light of a present infraction" (Award 5901). We find that the charge of violations of Rules 17 and 18 by Claimant was not supported by the record, and therefore, the claim must be sustained under the terms of Rule 27.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: E. A. Killen  
Executive Secretary

( Dated at Chicago, Illinois, this 27th day of October, 1972.