

The Second Division consisted of the regular members and in addition Referee Richard R. Kasher when award was rendered.

Parties to Dispute: ( System Federation No. 7, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Firemen & Oilers)  
( Burlington Northern Inc.

Dispute: Claim of Employees:

1. Under the current controlling Agreement, Mr. Paul R. Dees, Hostler Helper, Havre, Montana, was unfairly dealt with when the Burlington Northern Inc., placed an entry of censure on his personal record, effective April 28, 1978.
2. That, accordingly, the Burlington Northern, Inc. be ordered to remove the entry of censure from his personal record.

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.

Claimant was assigned as a hostler helper at the Carrier's Havre, Montana Diesel Shop. The incident which gave rise to the instant claim occurred on March 31, 1978 when the Claimant telephoned the Carrier at 1:52 p.m. (one hour and eight minutes prior to the starting time of his assignment) and asked permission to mark off that date for "personal reasons".

The Claimant did not work his assignment on March 31, 1978. The Carrier issued a notice of investigation dated April 1, 1978 in which the Claimant was charged with "failure to protect your assignment as Laborer, absenting yourself without authority on March 31, 1978".

The investigation was conducted and the Carrier concluded that the Claimant was guilty of the charge and disciplined Claimant by the entry of censure on the Claimant's record. The censure was for the Claimant's "failure to fully comply with requirements of Rule 665 of the Burlington Northern Safety Rules".

Rule 665 provides:

"Employees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties with or substitute others in their place without proper authority."

It is the position of the Organization that the Carrier erred by imposing discipline in this case. The Organization contends that the Claimant informed the Carrier of his intended absence more than an hour before the start of his shift and requested the day off due to an emergency concerning a flood at his father's farm. The Organization states that there is no doubt that the Claimant notified the proper authority of his intended absence and in view of Rule 15(f), which provides that "An employee unavoidably detained from work will not be discriminated against", the Claimant should not have been disciplined.

The Carrier contends that the claim should be dismissed since the requirements of the Railway Labor Act, regarding conference on the property, were not followed. On the merits, the Carrier contends that it did not act arbitrarily and capriciously when it placed an entry of censure upon the Claimant's record. It is the position of the Carrier that the Claimant absented himself from work without obtaining proper permission to do so and therefore the discipline imposed, which the Carrier contends was mild, was justified.

The record does not support a finding that the requirement regarding conferences with the highest designated officer of the Carrier, as specified in the Railway Labor Act, were not met. Therefore, we turn to the merits of this claim.

There is no dispute that the Claimant did not work his assignment on the date in question. Neither is there a question of the Claimant's having contacted the Carrier concerning his expected absence. The following excerpts from the investigative transcript are significant:

"Q. Will you please state what transpired during your phone conversation with Mr. Dees (Claimant)?

A. About 1:52 p.m. Mr. Dees (Claimant), Hostler Helper asked me for the day off. I asked him the reason and he answered 'Personal Reasons'. I then told him that permission was not granted. He replied, 'what do you want me to say?' I again asked him the reason and he replied again, 'Personal.' Again I said to him, 'permission is not granted for personal reasons' but that he would be written in the lay-off book. He then hung up terminating the conversation and I entered him in the lay-off book as follows: 3-31-78. Paul Dees, lay-off by self for personal reasons, permission is not granted, 1:58 P.M., R. Girres (Foreman).

"Q. Mr. Girres (Foreman), you refer to the lay-off book. Is the lay-off book the record that you keep at the Diesel Shop to keep track of all employees that call in for the purpose of laying-off in any manner?

A. That is right.

Q. And you stated to Mr. Dees that he did not have permission to be off?

A. That's right.

Q. Did Mr. Dees later report to work at 3:00 P.M. on March 31, 1978?

A. Not to the best of my knowledge.

Q. Did Mr. Dees have authority from you to be off on March 31, 1978?

A. He did not."

The above is the essence of the Carrier's case.

The following excerpt from the transcript is the rendition by the Claimant regarding the above quoted conversation with his foreman:

"Q. Did you report for duty at 3:00 P.M. on March 31 at the Havre Diesel Shop?

A. No, I didn't.

Q. Did you have authority from any of your supervisors to absent yourself from duty on the 3:00 P.M. to 11:00 P.M. shift on March 31, 1978?

A. I thought I did.

Q. You heard Mr. Girres (Foreman) state earlier that he advised you that you did not have permission to be off, twice, in his phone conversation. Did you understand that this is what Mr. Girres was trying to communicate to you, that you did not have permission to be off?

A. Well, he said that you can't use 'Personal' as an excuse to lay-off. But he said that he would put me in the book. So I figured that would ...

"Q. Did you hear Mr. Girres tell you that you did not have permission to be off, during the phone conversation?

A. Well, he said, 'I can't give you permission to lay-off using personal reasons'.

Q. In other words, he did tell you he didn't give you permission to be off?

A. No. He said he couldn't accept the personal as a reason."

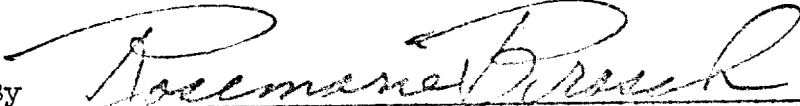
The above testimony clearly establishes the fact that the Claimant sought to absent himself from work with permission for "personal reasons". He did not receive the sought-after permission. Had he told his foreman that there was an emergency at his father's farm which required the movement of certain machinery to avoid the effects of a flood, it is conceivable that he would have received the permission that he was seeking. However, the record is clear that he was told, on at least two separate occasions, that he did not have permission. Although, Claimant states that he "thought that he had permission", there is nothing in the record to support the Claimant's supposition. Rule 15(f) is not found to be applicable. That rule applies to an employee unavoidably detained from work. That was not the case for the Claimant. He sought permission to be absent from work, the permission was denied, and he absented himself unilaterally. Therefore, it is found that the Claimant was properly charged and found guilty and that the discipline imposed was appropriate.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of November, 1979.