

Parties to Dispute: { Brotherhood Railway Carmen of the United
 { States and Canada
 {
 { Detroit and Toledo Shore Line Railroad Company

1. That the Detroit and Toledo Shore Line Railroad Company violated the controlling Agreement when Carman Michael Watkins was assessed a five (5) working days suspension on October 20, 1978, as a result of investigation held on September 28, 1978, at Toledo, Ohio.
2. That the Detroit and Toledo Shore Line Railroad Company be ordered to make Carman Michael Watkins whole for all pay and benefits lost due to the five (5) working days suspension and that the suspension be stricken from his service record.

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.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant, a carman was suspended for five days for his alleged absence for seven days on September 12, 13, 14, 15, 16, 19, and 20, 1978. An impartial hearing was held, pursuant to proper notice, on September 28, 1978 at which the organization and carrier presented extensive evidence and testimony.

The Carrier urges us to sustain the discipline because the claimant admits he was absent for seven working days and he failed to call his foreman in accord with Rule 12. The organization makes three arguments. First, the carrier arbitrarily and capriciously refused to allow claimant to change his vacation to the week of September 11, 1978. Second, the claimant had procured prior permission from his general foreman to be absent. Third, the claimant had a valid reason for his absence (his wife was in the hospital for surgery) and that he tried to notify the carrier by a collect telephone call.

In early August, claimant asked the carrier to change his scheduled vacation to the week of September 11, 1978. Because the carrier was not certain it could obtain a replacement, the carrier denied claimant's request to rearrange his vacation. Claimant never appealed the denial and the issue apparently was never raised until the investigation held concerning claimant's absence. While this Board recognizes that a grievance on the denial of vacation change may not have been resolved until after September 11, 1978, the claimant should have at least given the contract grievance procedure a chance to work. Therefore the claim for denial of a change in vacation is not properly before us.

After carefully reviewing the relevant evidence, we conclude the carrier failed to show that the claimant had not procured permission for the initial two days of his absence. After the carrier declined to change claimant's vacation dates, the claimant told his foreman he would have to be away from work for a couple days beginning September 12, 1978. The general foreman responded, "Well, if you have to be, you have to be." This statement, without any qualification by the foreman, gave the claimant the reasonable impression not only that the foreman knew he would be absent but also that the foreman had impliedly consented to the absence.

However, the record is clear, from claimant's own testimony that, on August 25, 1978, he requested permission to be absent for only a couple days. Thus, he was absent without permission for five of the seven days he was absent. To avoid discipline for an unauthorized absence for these five days, the claimant must have complied with Rule 12 which states:

"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."

Every employee must report to his assignment each working day,

"... unless his absence is validly justified and excused for good and sufficient reason such as illness, death of a family member or other matters which, in applying the rule of common sense and human understanding would clearly justify his absence." Second Division Award No. 7754 (Scearce).

The claimant was absent to be with his wife while she underwent surgery in another city. Such absence is justified under traditional notions of common sense and human understanding. But the existence of an excused absence does not relieve the claimant of his duty to promptly notify his foreman of his absence. When the claimant's absence extended beyond the couple of days he originally received permission to be off, he had an obligation to notify his foreman, at his own expense, that his wife's illness would keep him away from work for a longer period. The notice provisions of Rule 12 are essential to the smooth operation of the railroad so the carrier can take the appropriate action to fill the claimant's position during the absence. Claimant's attempt to place a collect call to his foreman was insufficient compliance with Rule 12.

As stated above, the carrier failed to proffer substantial evidence to prove the claimant was absent for two days without permission. The claimant, while he was absent for good cause for the remaining five days, should have timely notified his foreman that he would be absent. Under these circumstances, the penalty assessed should be reduced by three days. A two day suspension is adequate to impress upon the claimant his obligation to promptly report all absences. Accordingly, the claimant is entitled to three days of back pay at the rate of pay in effect when he served his suspension.

A W A R D

The claim is sustained but only to the extent consistent with our findings.

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 3rd day of December, 1980.