

Award No. 1890

Docket No. 1776

2-B&M-MA-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES: That under the current agreement Machinist Solon D. Spaulding was improperly removed from service and is entitled to reinstatement with seniority unimpaired and compensation for time lost less amount of earnings since suspension.

EMPLOYEES' STATEMENT OF FACTS: Solon D. Spaulding, hereinafter referred to as the claimant, entered the service of the Boston and Maine Railroad, hereinafter referred to as the carrier, on January 17, 1923, as a machinist helper and was promoted to the classification of machinist on August 15, 1925.

The claimant continued to work as a machinist at the carrier's Westboro, New Hampshire enginehouse until January 4, 1951, when he laid off on account of illness.

The claimant duly notified the carrier, in writing, under date of December 11, 1950, copy submitted herewith and identified as Exhibit 1, that he would have to take time off on account of ill health, but would try to work until after the holidays.

Carrier's General Foreman A. L. Wood told the claimant that he must first see the company doctor before he could be released because of impaired physical condition.

On December 20, 1950 the claimant presented the general foreman with a statement of his own physician, Dr. Norman W. Crisp, copy submitted herewith and identified as Exhibit 2.

The general foreman refused to accept a statement from the claimant's physician and insisted that the claimant consult Doctor Garrapy, the carrier's doctor.

The claimant went to see Doctor Garrapy who made only a cursory examination of the patient involving taking of pulse and questioning. Doctor Garrapy then notified the carrier's officers that the claimant was able to work.

By trying to assist the carrier by working until after Christmas and New Years, the claimant's condition became aggravated and on January 4, 1951 he laid off and subsequently went to Florida.

Respectfully, I do request the Board to weigh this case fully with all of the facts as presented; and to the extent that he was not improperly removed from the service. He removed himself therefrom by his own actions and did not interest himself to return to his location, or even acknowledge the notification) for the hearing as set, or subsequent thereto, when his local chairman was given an opportunity to interest Mr. Spaulding in appearing at the second scheduled hearing that was set for February 9, 1951.

The claim as submitted should be denied.

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.

The parties to said dispute were given due notice of hearing thereon.

Claimant's letter of December 11, 1950 to the general foreman indicated he was suffering from an ailment for which rest and treatment had been prescribed by his physician. Confusion existed, however, as to whether time off for such purpose would come under the provisions of Rule 16—Leave of Absence—or Rule 17—Absence from Work.

Rule 17 refers to situations where an employe is unavoidably kept from work because of sickness or any other good cause. It does not refer to conditions when time off is anticipated and suitable arrangements therefor can be made in advance under the provisions of Rule 16.

In the instant case we think claimant erred in taking leave before the conflict involving Rules 16 and 17 could be resolved. However, claimant had been an employe of the carrier for 28 years and so far as can be determined from the record before us had not previously been disciplined. In view of this and other facts of record we think the purposes of discipline have been adequately accomplished by suspension from service on February 19, 1951, and claimant is entitled to reinstatement with seniority unimpaired, but without compensation for time lost.

AWARD

Claimant reinstated with seniority rights unimpaired without compensation for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 9th day of February, 1955.