

The Second Division consisted of the regular members and in addition Referee Wesley A. Wildman when award was rendered.

Parties to Dispute: { System Federation No.1, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 (Electrical Workers)
 { The Staten Island Rapid Transit Operating Authority

Dispute: Claim of Employees:

- 1) That under the current Agreement, Electrician Helper Lawrence B. Kurschner was improperly dismissed from the service of the Carrier.
- 2) That accordingly, the Staten Island Rapid Transit Operating Authority be ordered to return electrician helper Lawrence B. Kurschner to their service with all seniority rights restored and all pay due him since he was discharged up to the date he is returned to service, at the applicable electricians helper rate for each working day he has been improperly held from service; and all other benefits due him under the group hospital and life insurance policies for the abovementioned period; and, all railroad retirement benefits due him, including unemployment insurance and sickness benefits for the above described period; and all other benefits that would normally accrue to him had he been working in the above described period in order to make him whole.

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 were given due notice of hearing thereon.

With respect to the period of absence which is the subject of this case, Electrical Worker Helper Kurschner, Claimant here, was first reported off sick on March 30, 1977. The following day, it was duly reported to Carrier that Claimant was undergoing an appendectomy.

Without any official subsequent notification from Claimant as to his condition following the appendectomy, Carrier became aware from a newspaper article that Claimant was involved in an automobile accident on May 6, 1977, which required the Claimant's hospitalization. During the month of July, 1977 while Claimant was still absent from work, allegedly as a result of injuries received in the auto accident, he made a number of visits to his place of work, chatting with fellow employees and, evidently, on occasion, with supervision.

Claimant, at no time subsequent to his accident having made any formal or official representations whatsoever to Carrier regarding his condition or estimated date of possible return to work, was specifically directed on August 3, 1977 by the supervisor of the Mechanical Department, John N. Rivellino, to provide a doctor's statement of incapacity and a projected return-to-duty date. While this directive was communicated verbally by telephone and not, as the Organization claims should have been the case, by letter, Claimant does not deny receiving the request.

What transpired subsequently involves an issue of credibility as between Claimant and Supervisor Rivellino. Claimant asserts that several days after August 3rd he tendered to Rivellino a certificate of disability from a physical therapist. Rivellino flatly and categorically denied that Claimant ever offered to him, or in fact gave to him, any document whatsoever relating to his disability. Without going into elaborate detail, we find that there is quite adequate support in the record for Hearing Officer's finding in favor of Supervisor Rivellino on this crucial credibility issue.

Subsequently, on August 26, 1977, Carrier, claiming it had received no response to its August 3rd directive to Claimant, took Claimant out of service.

We are brought to the essential fact on this record that Claimant, while he appropriately notified Carrier at the outset of his initial absence, was subsequently absent for a nearly five (5) month period without formal notification to Carrier of the extent of his disability or his expected date of return to work, and without ever making any formal request for a leave of absence. It is true that under the circumstances reviewed above, the Carrier might easily have initiated formal inquiries as to Claimant's status well in advance of the August 3rd date, offering one or more warnings to Claimant that failure to respond satisfactorily to inquiries might result in termination. Also, as the Organization asserts, the Company would have had the right under the circumstances to demand a physical examination to be performed by Company doctors.

However, widely accepted industrial relations practice and precedent generally, and clear inferences to be drawn from Rules 5, 18 and 19 in the controlling agreement regarding absences from work and leave requests, establish an affirmative obligation (absent proof of total incapacity and inability to communicate) on the part of an absent employee to make reasonable efforts to keep the employer informed as to the course of his illness or disability and, if necessary, to take appropriate steps to insure that the employee is protected at the minimum by an employer acknowledged, at least de facto, leave of absence.

Claimant's failure to take any significant measures to inform his employer, particularly after a formal request to do so, displays an indifference to the protection of his job which, in the opinion of this Board, cannot be rewarded by a reinstatement order.

There is substantial evidence on the record to support the findings of the Carrier that Claimant did not meet his obligations to protect his job during his lengthy period of absence. Finally, there is no basis for a finding by this Board that, under the circumstances here prevailing, the imposition of the discharge penalty was arbitrary, capricious or unnecessarily harsh.

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 11th day of June, 1980.