Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 8877
SECOND DIVISION Docket No. 8573
2-SCL-EW-'82

The Second Division consisted of the regular members and in addition Referee Francis X. Quinn when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employes:

1. That the Seaboard Coast Line Railroad Company violated the current working agreement, in particular Rules 15, 19 and 32 and the Mediation Agreement Case A-9106 effective February 1, 1973, when upgraded Electrician Apprentice L. O. Barber was unjustly withheld from service and disciplined beginning May 18, L977 and extending through August 12, 1977, both dates inclusive, as result of investigation held on June 23 and 24, 1977.

2. That, accordingly, the Seaboard Coast Line Railroad Company be ordered to compensate upgraded Electrician Apprentice L. O. Barber in the amount of eight (8) hours per day at the punitive rate of mechanics' pay for the period covering May 18, 1977 through August 12, 1977, a total of sixty-three (63) days.

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.

The evidence of record in this dispute clearly establishes that Claimant was guilty of being absent from his assignment without permission during almost the entire period from July 13, 1975 until May 18, 1977.

When Claimant presented himself for return to duty on May 18, 1977, after being off duty for almost 2 years, he submitted the following: 1) a report from Dr. Calhoun dated May 17, 1977 stating that Claimant had been suffering from acute anxiety from July 10, 1975 and that he had been hospitalized for an unstated period of time; the report also stated that a letter was attached thereto, but when Claimant presented the form, no such letter was attached, and 2) a letter from Dr. Hicks dated May 9, 1977 stating that the last time he had seen Claimant was March, 1976, over a year earlier, and that Claimant's problem had stemmed from a series of domestic difficulties.

Due to the sketchy nature of the reports, the Carrier's Chief Medical Officer requested that more detailed information be furnished concerning Claimant's protracted absence. The only other information that was forthcoming was a hospital report

sent on two different occasions, May 23 and June 6, 1977, stating thereon that Claimant had been hospitalized from July 20, 1975 until August 2, 1975 with a final diagnosis of pancreatitis and anxiety. In addition, in that portion of the form captioned "DEGREE OF DISABILITY", the following was set forth:

> "One or two weeks after dismissed. Patient is dismissed with condition medically improved. He is to continue Valium 5 mgs. and is instructed to return to the doctor's office for routine out-patient followup."

While this report gave details of Claimant's illness during his 13-day hospital stay in 1975, it shed no light whatsoever in explaining the reason for Claimant's continued absence after a two-week convalescence period.

Carrier again advised Claimant that additional medical information was necessary before Claimant could be returned to work, but no information has been offered which can effectively explain medically why Claimant was absent during the period considered herein.

During the handling of this case, the Employees have charged that the Carrier had violated Item 2 of the Mediation Agreement, Case A-9106, inasmuch that Carrier did not arrange for a physical examination for Claimant within "a reasonable period." Such a contention fails on two grounds.

First, Item 2 of the Agreement is dependent upon a completion of the terms of Item 1 of the Agreement which requires that when an employee returns from an illness or off-duty injury, he will furnish a report which includes a "brief history of illness or injury, diagnosis, duration of care, treatment and prognosis". Absent Claimant's fulfilling the conditions set forth in Item 1, the Carrier could not determine if a physical examination was necessary as provided for in Item 2 of the Mediation Agreement.

Secondly, the question of Claimant's physical condition on May 18, 1977, is not the central issue here in dispute. Rather, Claimant was investigated for unauthorized absences from July 13, 1975 until May 19, 1977. Based on the medical information supplied by Claimant and his physicians, or better stated the lack of same, the Carrier rightfully determined that during such period there was no sound medical basis for Claimant's absence and, therefore, properly found Claimant guilty as charged and assessed commensurate discipline in connection therewith.

The Employees have also taken the position that the Carrier violated Rule 19 of the controlling Agreement which states that an employee who is unavoidably kept from work will not be discriminated against and that if such employee is sick he shall notify his foreman. The record indicates that it was the Claimant who failed to reasonably demonstrate that he was sick during the entire period in question or that he was unavoidably detained from work. The only time that the Carrier had been notified of Claimant's illness was on July 12, 1975 when Claimant's brother allegedly called the Carrier and advised that Claimant "would not report for work because he was sick". This one telephone call made in July, 1975, cannot serve to fulfill the Claimant's obligation to keep the Carrier informed regarding a two-year absence from his assignment. The following statement by Referee Marx in Award 7748 is germane to this dipute:

"... The provisions of Rule 22, whatever other purposes they may serve, are not a defense against chronic absenteeism. As held many times before the Board, the employer has a right to expect regularity in attendance. There are no mitigating factors in this dispute to modify this general principal."

The Union has furnished no evidence or proof that there has been a violation of any rule in the Agreement. Repeatedly, all Divisions of the National Railroad Adjustment Board have held that, before a claim can be sustained, a rule violation must be proven, and that the "burden of proof" rests with the petitioner.

In this regard, Second Division Award 5526 held: "Mere allegations without proof are of no probative value." Likewise, Second Division Award 6054 held: "We find no probative evidence to support the claim. This Board has held on many occasions that the burden of proving claim is on the claimant."

In Third Division Award 16288, the same principle was affirmed:

"The burden is not upon the Carrier to show that its action is authorized by some provision of the Agreement. Rather, the burden is upon the complaining employees to show that the action taken violates some part of the Agreement. When viewed in this context the claim must be denied since the Employees have failed to meet the burden thus placed upon them."

Again the principle was affirmed in Third Division Award 17833: (SCL vs BRAC)

"It is a well established principle of the Board that the burden is upon claimants to prove all essential elements of their claim, and that mere assertions are not proof. (Awards 16881, 16813, 16780, 16499, 16528, among others.)"

We conclude that the Claimant was afforded a fair and impartial investigation and had every opportunity to explain the reasons for his protracted absence. This he failed to satisfactorily do. Accordingly, we must deny the claim.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of January, 1982.