

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers  
(Northeast Illinois Regional Commuter Railroad Corporation  
(A Public Corporation)

STATEMENT OF CLAIM:

1. That the Northeast Illinois Railroad Corporation violated the current agreement when it unjustly and unfairly dismissed Communication Maintainer Michael H. Spinks from service on January 19, 1989.

2. That the Northeast Illinois Railroad Corporation be ordered to reinstate Michael H. Spinks to service promptly with all of his seniority and other rights unimpaired, and he should be compensated for all lost wages (including 18% interest thereon) and benefits and his record should be expunged with regard to this incident.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 dismissed from service following the Carrier's review of an investigation held on January 10, 1989. That investigation had considered the facts and circumstances surrounding Claimant's absence from his work assignment on December 13, and December 14, 1988, in violation of Rule Q. Rule Q states in pertinent part that:

"Employees must report at the appointed time, devote themselves exclusively to their duties, must not absent themselves nor exchange duties with nor substitute others in their place without proper authority."

The Organization has argued that the Claimant contacted his supervisor as soon as he was able to do so on December 14, 1988, indicating that he was unable to protect his assignment. It points to the fact that the Claimant informed the Carrier of his personal problem and requested the use of his three remaining vacation days to cover his absences. The Organization argues

that the Memorandum of Agreement dated February 22, 1988 allows employees that option. It finds the dismissal unwarranted.

We view the record as fully substantiating the Carrier's charges. The testimony establishes that the Claimant failed on December 13, 1988 to either report for duty or to call and inform his Supervisor that he would be unable to protect his assignment. Claimant's explanation for his inability to call is wholly inadequate. We do not accept the fact that the Claimant lacked the money to make the phone call and there is no record supporting injuries severe enough to have made notification impossible.

The record indicates that the Claimant did call the Supervisor two hours after his shift began on December 14, 1988. Claimant indicated that he had personal problems. He did not state that it was an emergency. Claimant's defense throughout the Investigation was that he had been severely beaten up and evidence supports that fact. Nevertheless, the extent of his injuries did not prevent the Claimant from walking two miles to a friend's house nor did he require medical help. In fact, the Claimant was told to report to work on December 14th due to a shortage of personnel and he failed to do so. Claimant's defense does not objectively support the fact that he made contact as soon as he was able. His contact to protect his assignment occurred long after he was beaten up. We do not find the nature of his request on December 14th to be in compliance with the language of the February 22, 1988 Memorandum of Agreement. The testimony confirms that the Claimant failed to fulfill his responsibilities and did violate Rule Q.

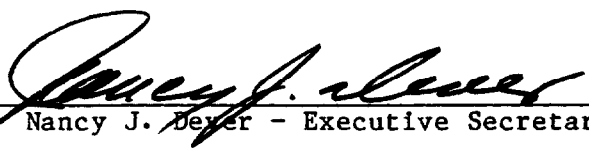
The Board finds the Carrier's discipline was fully supported by the record. The Claimant had been previously guilty of the same Rule infraction. Prior to dismissal, Claimant's disciplinary record indicates that he had signed waivers of a five day, thirty day and sixty day deferred suspensions for violations of Rule Q in this same year. In this instant case, we find dismissal as fully warranted given the proven charges and the Claimant's record with the Carrier. The Claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois this 25th day of September 1991.