

Award No. 5411

Docket No. TD-5326

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Glenn Donaldson, Referee.

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Chicago, Rock Island and Pacific Railroad Company violated Article 7 of its agreement with the claimant organization by its action in suspending Dispatcher F. E. Abernathy from his position as trick train dispatcher, effective November 29, 1949, upon a charge unsustained by record of hearing held subsequently, on December 6, 1949.

(b) Dispatcher F. E. Abernathy now be compensated for time lost as a result of carrier's unsustained action.

(c) Dispatcher F. E. Abernathy's record now be cleared of the unsustained charge.

OPINION OF BOARD: Claimant Abernathy, age 65, with 42 years' service on the lines of this Carrier, was charged with absenting himself from duty without proper authority commencing at 8:00 A. M. November 23, 1949. Carrier relies on Operating Rule 717, reading, in part, as follows:

"Employees must not absent themselves from their duties, * * * without proper authority."

Claimant defended upon the grounds that five days previously he had given notice to the Chief Dispatcher in writing of his intended absence on November 23 for a few days on account of sickness. He stated at the hearing that his physical condition was such that he could not work with safety in his position as Train Dispatcher; that burdened with an excess amount of tonnage causing him to work rest days and break in two Train Dispatchers, he could not sleep, his appetite was poor and he lost ten pounds in weight. The day of his application he received word that leave was denied, but despite this advice he left Little Rock on November 21, the first of a two-day rest period, and absented himself until November 30. During his absence he resided with his wife at Vet's Haven near Hot Springs, Arkansas, where he took baths and massages. A fellow Dispatcher testified as to the work burden Dispatchers at Little Rock were laboring under as a result of a strike, and supported claimant's testimony concerning his condition of health, stating, "He appeared on the verge of nervous collapse,—face twitchings, lips quivering." This testimony was corroborated by a second witness called by claimant.

Claimant had asked for relief prior to November 18. He testified "I asked to be off October 16, but according to the condition of the railroad at that time and a heavy volume of business account of Missouri Pacific strike, I worked my position until I felt I could not safely go on."

The uncontradicted testimony adduced at the hearing indicates that two Train Dispatchers were available at this point who could have relieved claimant without violating the Hours of Service Act. His position was filled by another during his absence.

The Carrier did not place in evidence claimant's work record. No previous disciplinary action is shown.

From a reading of the submissions, it is clear that Carrier did not base the disciplinary action complained of upon the evidence adduced upon the hearing. Rather it proceeded upon mere assumptions and inferences gathered outside of the record of which the following was typical:

1. That relief was not available.
2. The claimant possessed a refractory attitude and a recalcitrant disposition.
3. That physical exhaustion and need for rest cannot be anticipated.
4. That a prudent man would have consulted a medical practitioner.
5. That "a properly disposed employe would have obtained a statement from a reputable physician giving diagnosis and prognosis of the physical disability preventing him from continuing in his employment."
6. That one in ill health would not have guests (testimony showed that conductor and wife visited claimant during his stay at Vet's Haven—duration unknown).
7. That he planned his absence as an outing and invited friends.

If prudent men would act as Carrier contends or if there was evidence in support of the assumptions made, we would follow our customary course and refrain from interfering with Carrier's exercise of discretion in disciplining its employes, but such is not the case.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

Carrier was unreasonable and arbitrary in denying claimant's application for relief, seasonably made and for good cause. Discipline assessed under Operating Rule 717 cannot be sustained upon the record made.

AWARD

Claims sustained for November 30, December 1 and 2, 1949, and Dispatcher F. E. Abernathy's record shall be cleared of the demerits assessed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of July, 1951.