

Award No. 8832

Docket No. MW-10125

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective Agreement when it dismissed Relief Section Foreman P. H. Dugas from service on April 22, 1957.

(2) Relief Section Foreman P. H. Dugas be reinstated to service with seniority, vacation and all other rights unimpaired and reimbursed for all wages loss suffered because of the violation referred to in Part (1) of this claim.

OPINION OF BOARD: Claimant, a Relief Track Foreman on Carrier's Gulf Division, after having reported off sick on Monday, March 11, 1957, through Wednesday, March 13, 1957, accepted Carrier's request to relieve a regular Track Foreman at Anchorage, Louisiana, on March 14 and 15, 1957. On said March 14 he told his supervisor, Roadmaster Desselle that he was not feeling well but said he thought he could do the work on said two days.

At or about 2 P. M. on March 15, 1957, Claimant told employee Heard to take the gang across the river to surface a slide while Claimant made a telephone call. The record does not disclose whether Claimant made a call from Anchorage and, if so, what the call was about. The record does disclose that (1) Claimant, after having left Anchorage at or about 3 P. M., without having informed Heard, called District Engineer Colvin's office at or about 3:40 P. M. from Ft. Barre, Louisiana, in respect to some work on Monday, March 18; (2) Roadmaster Desselle, happening to listen to the conversation, cut in and learned from Claimant the latter's whereabouts; and (3) Claimant later left Anchorage to confer with his family physician at St. Martinsville, Louisiana.

On April 10, 1957, a hearing was held at DeQuincy, Louisiana, to develop facts in respect to Carrier's charge that Claimant had on March 15, 1957, left his gang before close of work without permission or authority, in

violation of Carrier's Rule 122. On April 22, 1957, Carrier notified Claimant of his dismissal from service. Successive appeals up to and including Carrier's highest appropriate official were denied. Notification of intention to file an ex parte submission was received by this Division from the Organization on January 15, 1958, and said submission arrived here on February 14, 1958.

The Organization claims no procedural defects in the instant case. It does allege the following: (1) The evidence adduced at the hearing did not support Carrier's decision to dismiss Claimant. (2) Claimant's previous record was clear of demerits as of date of hearing. (3) Carrier's Rule 122 was not controlling in respect to Claimant's behavior. It is a general rule, as contrasted with specific Rule 205, which applies only to foremen. (4) As to the latter, Claimant did, as the rule required, notify his superior officer of his physical condition; did place his most reliable man in charge of the gang; and did not leave the latter with work that would have interfered with the safe passage of trains.

The Board first considers the argument that Carrier's Rule 205 rather than Carrier's Rule 122 should have controlled Carrier's charges and decisions. The Board holds that either or both of said rules might properly have been used by Carrier and that it was within Carrier's discretion to choose which one (or both) should be employed. Rule 122 applies to "all" employees, and Claimant was assuredly an employee of Carrier. The principle of contract construction which says that general provisions must yield to special ones does apply to agreements negotiated by two parties; but said principle does not necessarily govern the application of unilateral rules among which in the first instance an employer has the right to choose.

Granted Carrier's right to select and apply its Rule 122 in the instant case, the next questions are those raised in Award No. 8431. Was and is Carrier's Rule 122 reasonably related to the orderly and efficient operation of its business? Was Claimant given a reasonable opportunity to acquaint himself with the provisions of said rule and with the consequences of disobeying same? At Carrier's investigation was substantial evidence introduced establishing Claimant's violation of said rule? Did Carrier conform to the procedural and substantive requirements of Rule 12 of the Parties' Agreement? Was Carrier's decision of dismissal reasonably related to the seriousness of Claimant's offense (assuming proven guilt)?

The Board finds in the record of this case no evidence that would justify a ruling that the answer to any of the above-posed questions should be "no". Carrier's Rule 122 is clearly shown to be necessary to the safe and efficient operation of its public-serving business. Claimant is shown to have known the rule and to have understood the consequences of disregarding same. Carrier's investigation is shown to have conformed to the requirements of Parties' Rule 12 and to have developed substantial evidence that Claimant without proper authority absented himself from his position during his assigned work-hours and substituted another employee (Heard) in his place. On its face this offense was so serious that the judgment of dismissal cannot be deemed an abuse of Carrier's discretion. No element of arbitrariness, unfairness, or unreasonableness can be found in Carrier's decision.

The Board rules that the Claims must be denied.

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 Employee involved in this dispute are respectively carrier and employe 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

That the Agreement was not violated.

AWARD

Claims (1) and (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May, 1959.