

Award No. 9677
Docket No. CL-8996

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY**

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

1. Carrier violated the rules of the Clerks' Rules Agreement when it held Employee E. V. Gull, Milwaukee, Wisconsin, from service pending investigation and when it dismissed him from service following investigation.

2. Carrier shall now compensate Employee E. V. Gull for all loss sustained from May 16, 1955 until he was reinstated on June 2, 1955.

OPINION OF BOARD: By letter of May 17, 1955, Claimant Gull was notified that he was charged with being absent from duty on May 16, 1955, "without good cause", "without permission", and without "notifying the supervisor or proper authority". The facts of the case bring it within Rule 25 (a), which provides:

"An employee detained from work because of sickness or disability shall notify his Supervising Officer as early as possible; an employee detained from work because of sickness or personal injury of himself or an immediate member of his family will be regarded as on leave of absence * * *."

Under the facts of the case (Claimant's daughter had been bitten in the face by a dog the preceding day and it was necessary for Claimant to take her again to a doctor) Claimant did have "good cause" for being absent from duty within the application of Rule 25 (a). And as to the notice requirement of said Rule, it is reasonably clear under the Record herein that Claimant's immediate Supervisor, Mr. Brussock, either knew or should have known by virtue of Claimant's actions just prior to commencing work on the morning of May 16 that Claimant expected to be absent after 11:30 A. M. that day in order to take his daughter to the doctor. Even more significant, however, is

the fact that in finally dismissing Claimant on May 26, 1955, the Carrier quite apparently did so largely on the basis of Claimant's not having obtained permission from his Supervisor to be absent. For instance, Carrier's reinstatement letter of May 31, 1955 states:

"I have given further consideration to the case which resulted in your dismissal from service on May 26, 1955. You are aware of the fact that you were charged with being absent **without permission** and that there was nothing developed in the investigation of the charges which indicated you had **permission** to be absent from service regardless of the reasons therefore." (Emphasis added.)

Likewise, Carrier's letter of August 16, 1955, states:

"I have again reviewed our file in this case and there is nothing in the investigation which indicates that Mr. Gull had **permission** from his supervisors to absent himself from service and therefore your claim is respectfully declined." (Emphasis added.)

Also, Carrier's letter of November 25, 1955, assumes to justify Carrier's action against Claimant on the basis that he "was absent from his assignment and service **without permission**". (Emphasis added.) While the Carrier unquestionably believed (mistakenly), at the time when the present case arose and was handled on the property, that permission was necessary, this Board subsequently recognized in Award 8990 that under Rule 25 (a) the employee is "not required to have a permit to justify his absence".

Finally, it should be noted that the Organization is correct in contending also that the Carrier violated Rule 22 (a) in holding Claimant out of service pending the investigation. Said Rule provides, in part:

"The employee may be held out of service pending such investigation, however, investigations will be held prior to the time employees are held from service when it is possible to do so."

If there be any case in which the employee should not be held out of service under Rule 22 (a) it would seem to be here, where Claimant had a long and apparently good record of service with the Carrier and where the case obviously did not involve drastic conduct or anything in the nature of moral turpitude on Claimant's part. Moreover, District Storekeeper Lummer recognized at the investigation that it was not impossible to investigate the case prior to holding Claimant out of service.

In view of all the above considerations it must be concluded that the Carrier violated the Agreement as alleged in the claim.

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 Employee 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of December, 1960.