

Award No. 16750

Docket No. CL-16584

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

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

SOO LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6040) that:

(1) Carrier was unreasonable and unjust in the assessing of discipline in the form of dismissal, which was later reduced to a suspension from service, of Mr. Louis Jarocki, Bill Clerk, Schiller Park, Illinois, commencing July 30, 1965.

(2) Claimant Jarocki shall now be compensated for all time lost from July 30, 1965, until the date of his return to the service of the Carrier.

OPINION OF BOARD: Claimant Jarocki departed from Mosinee, Wisconsin to return to his station at Schiller Park, Illinois, a distance of 275 miles, five hours prior to his assigned starting time at Midnight July 16, 1965. During the trip he encountered a rainstorm which delayed his drive. He telephoned Chief Clerk Cheze to inform her of his delay. After the telephone call he resumed his trip, was further delayed by an automotive breakdown and finally reported to work 4½ hours late. He was sent home, and an investigation was held after which he was dismissed from service. He was later restored to service following a Carrier letter to the General Chairman dated January 11, 1966. Organization filed the instant claim for compensation for all time lost from July 30, 1965 until the date of his return to the service of the Carrier.

Organization contends that Claimant was legitimately delayed on his trip, that he contacted the appropriate Carrier official to report the delay, and that he should not be penalized for his inability to get to his work station at the start of his shift.

Carrier asserts that Claimant has an obligation to leave his point of departure in sufficient time to report to his work station as scheduled, and that when delay is foreseen he is required to contact the appropriate Carrier official, in this case the Yardmaster or the Terminal Agent, to obtain

permission for his absence or tardiness. It argues that Miss Cheze was not authorized to grant such permission, and that Claimant failed to live up to his responsibilities by telephoning her merely to state he would be late. Accordingly, it concludes that the reduced penalty of return to service without back pay was appropriate.

The essential question for resolution in this case is whether Claimant fulfilled his obligations to the Carrier by calling in his absence to Miss Cheze. Despite the fact that the Yardmaster or the Terminal Agent are the appropriate officials to contact for permission to be absent, it is clear that at least in situations where tardiness is anticipated, employees have followed the practice of telephoning the Chief Clerk on duty, to inform of their expected delay. This is precisely what the Claimant did in this case, in conformity with what appears to be general practice. Accordingly, we find the penalty of reinstatement without back pay to be excessive under the circumstances of Claimant's good faith call-in effort.

Despite the fact that Claimant acted reasonably in reporting his delay, he clearly neither sought nor received permission to be tardy. He might have protected himself by contacting a higher Carrier official possessing authority to excuse the delay, but failed to do so. Accordingly, a penalty is in order for his unexcused tardiness. Claimant is employed to perform certain duties at prearranged times which he is certainly aware of. He must undertake his personal activities with the knowledge of these responsibilities. It is his duty to allow sufficient time to report to work allowing for unforeseen delays. He cannot rely on others to meet his obligations. When he fails to report to work as scheduled he must realize and bear the consequences of his actions. In the light of the circumstances in this case we find a 60 day disciplinary penalty to be appropriate for the infraction involved. Claimant shall be reimbursed for earnings lost during the period commencing 60 days after July 30, 1965 until the date of his restoration of service, minus any interim earnings or receipts.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 violated by the Carrier.

AWARD

Claim sustained to the extent indicated in the foregoing Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of November, 1968.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.