

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20266
Docket Number CL-20307

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, height Handlers, Express and
(Station **Employees**
((formerly Transportation-Communication
(Division, **BRAC**)

PARTIES TO DISPUTE:

(The **Long Island Rail Road** Company

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, **BRAC**, on the **Long Island Railroad, GL-7388**, that:

1. Carrier violated the Agreement between the parties because it dismissed Block Operator, Robert C. **Farley** without just cause on July 25, 1972.

2. Carrier shall now reinstate Claimant, Robert C. **Farley**, to service with seniority, vacation and other rights unimpaired.

OPINION OF BOARD: On July 4, 1972, Claimant was regularly assigned as Block Operator from 3:00 p.m. to 11:00 p.m. At approximately 6:45 p.m. he left the property. He returned one hour later and found two Railroad Patrolmen and a Trainman in the tower. When asked what they were doing there, Claimant was advised that he had "missed a train." Claimant checked, and found that the statement was true. After a brief discussion, Claimant again left the property.

Claimant was charged with a violation of Rule E, which, among other things, prohibits an employee from absenting himself from duty. After 8 trial on the charge, Claimant was dismissed from service.

Claimant admits that his actions of July 4, 1972 were improper, but states that they were caused by extenuating circumstances. He states that he had certain personal marital problems at the time and as a result, without permission, left the tower to make 8 phone call to his wife. A nearby phone booth was in use, so he drove approximately five (5) minutes to the next available phone booth. Claimant states he felt he had an hour of time available, but concedes that he misread 8 new timetable which demonstrated that he only had 8 few minutes.

When Claimant returned to the tower approximately one hour later and was confronted by the Patrolmen, Claimant states that they were laughing and he was "rubbed the wrong way" by their nonchalant

attitude. He became **mad and** drove **away** from the premises. After a short drive, he felt **that** his actions were not too serious, **and** considered returning to the tower, but felt that it **was** too late.

Claimant conceded, at the **trial**, that "...I know I **was** wrong with my actions, there is no **way** of condoning what I did."

The Organization does not seek to **pardon Claimant's** action, but urges **that** the punishment of **dismissal was** too severe Under **all** of the **circumstances**.

The **Carrier** considered Claimant's **past** record when **assessing** the penalty, i.e., 8 15 **day** suspension for **insubordination** and 8 30 **day** suspension for possession **and** use of intoxicants while on duty.

At the Hearing before this **Board**, the Organization **stated** that the Discipline Record attached to **Carrier's Ex Parte Submission** **is** someone's record, but it is not identified as **Claimant's**.

On **November 16, 1972**, **Carrier** advised the Organization that Claimant's past record **was** being **considered**. Notice of Intention to file **Ex Parte Submission** to this **Board** **was** submitted on **June 19, 1973**. At no time during **that time period** did Claimant **raise any** issue concerning the prior record. **Carrier attached to its Ex Parte Submission, as Exhibit 8, two pages**. One clearly identifies **itself as** the service record of **Claimant**. The second **page** of **Exhibit 8 is a discipline record**, but it contains no further **identification**. It is noted that the **Employees' Reply to Carrier's Ex Parte Submission** **fails to question that Page 2 of Exhibit 8 is, in fact, Claimant's record**. Under the **facts and circumstances** of this record, we are inclined to believe that **Page 2 of Exhibit 8 is, in fact, Claimant's disciplinary record**. However, in **an** effort to consider the record in the **most** favorable light to **Claimant**, we will **disregard** it from our **consideration**.

We feel that Claimant's **actions** of **July 4, 1972** are sufficient in **and of themselves**, to warrant **Carrier's** action.

The **Organization** has submitted a number of **Awards** for our consideration, **dealing** with severity of **punishment**. We have reviewed those **Awards** in **detail** and note that, by **and large**, **discharges** were reduced to **lesser** punishments barred upon compelling mitigating **circumstances**, or **determinations** that the **offenses** were relatively minor in nature. We find no such **factors** here. Even **assuming** that **Claimant** **was** undergoing severe marital problems and **was** emotionally distraught

(and the testimony at the **trial** does not **fully** support that conclusion), he **made** four (4) independent, **willful and deliberate determinations** on July 4, 1972 which demonstrated **8 disregard** for his employment **relationship and** his obligation to the Carrier.

Initially, he decided to leave the tower, without permission to "go **downstairs**" to **make 8 personal call**. This act **was in violation** of Rule E.

Secondly, when he found the nearby telephone in use, he compounded his violation by driving **away** from the tower to find **another** phone.

Thirdly, when he returned to the tower, he became **upset** at the Patrolmen's attitude **and** deserted his position **8 second time**.

Finally, after departing the tower the second time, he realized that he should return, but concluded that he would not.

The four decisiona stated above do not, of course, take into account his **misreading** the **timetable** or the length of his initial **absence**.

Upon the entire record, **this Board** is of the **view** that Claimant, on **July 4, 1972**, allowed his own personal situation to totally **erase** his obligation to **Carrier**. Each **time** he had an opportunity to mitigate his initial desertion of duty, he opted, rather, to **compound** it.

We find no **basis** for **disturbing** the Carrier's action.

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 Employes** involved in this dispute **are** respectively **Curler and Employes** within the **meaning** of the Railway Labor Act, 88 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.

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Claimdenied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paulos*
Executive **Secretary**

Dated at **Chicago, Illinois**, this 3Lst **day** of May 1974.