

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20831  
Docket Number X-20806

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company:

(a) On or about January 22, 1973, the Carrier violated the current Signalmen's Agreement, particularly **Rules 16(a)**, 67 and revised **Rule 60**, when it disciplined Mr. John D. Foote thirty **(30)** days deferred suspension, **when** he did not repair the malfunction of the Lake Bluff interlocking plant, account of being registered unavailable for calls as Rule 16(a) allows.

(b) The Carrier **now** be required to **clear** Mr. John D. Foote's record of this discipline. **/Carrier** File: D-9-8-1421

OPINION OF BOARD: Claimant was charged with failure to comply with instructions to **perform** certain repairs. Subsequent to investigation, a thirty (30) day deferred suspension was assessed.

On January 12, 1973, Claimant registered absent or "checked **out**" pursuant to **Rule 16(a)**:

"SUBJECT 16. (a) **Employees** assigned to regular **main-**  
TO CALL t-ce duties recognize the possibility of  
emergencies in the operation of the railway,  
and will notify the person designated by the  
management where they **may** be called. When  
such **employees** desire to leave their home  
station or section they will notify the per-  
son designated by the management that they  
will be absent, about **when** they will return,  
and, when possible, where they may be found.  
Unless registered absent, regular assignee  
will be called."

At the **instruction** of the Dispatcher, at about **6:27** p.m. on the day in question the Telegraph Operator attempted to contact Claimant (at home) by telephone, however the line was busy. At **6:31**, Claimant answered his phone, and the Telegraph Operator told him that there was certain trouble requiring his attention. According to the operator, Claimant responded that he had "checked out. "

The operator attempted to contact other **employees, both** before and after the time he spoke with Claimant, to no avail (except for one employee who lacked the necessary experience). This information was relayed to the Dispatcher, who advised the operator to keep trying, and to contact the employees who had **"checked out."** The only employee he was able to reach was Claimant (at **7:24 p.m.**). When Claimant was told of the **Dispatcher's** instructions, he responded (according to the operator), "Sorry, buddy, I **as leaving** town."

At the investigation, Claimant denied that he mentioned that he was leaving **town**, but rather, testified that **when** the operator told him that the Dispatcher said, 'You gotta go' - he answered: "That I didn't gotta go."

Although not mentioned **on** January 12, 1973, Claimant stated at the investigation that his refusal was predicated upon the fact that he was an official of the Union and **was** "checked out" to go to a Union meeting. There was also reference to the fact that Claimant's father was seriously ill in the hospital at the time.

The Organization takes the position that, "registering off call should also relieve the **employee** of his responsibility to respond...."

We question that the wording of Rule **16(a)** grants an employee an **un-**fettered right to be absent from duty merely by having "checked out." Such a contention **was**, in general terms, advanced and rejected in Award 10846. Moreover, Claimant conceded, at the investigation, that part of his responsibilities as a Signal Maintainer is to answer emergency calls. In addition - although there **was** some question as to the clarity of the document - Claimant read and signed Circular Letter No. 256 five (5) months before the incident which stated, in part, "Simply registering 'unavailable' or 'checking out' is insufficient information and not in accordance with **existing** rules, instructions, or schedule agreement."

Although considerable mention has been made of the state **of** Claimant's father's health, he never stated that said factor entered into **his** refusal to respond to the **instruction**. In its Rebuttal Statement, the Organization states that Claimant **"...might** have wished to visit his father in the hospital, and attend the Union meeting, during the **same** evening." The cited assertion **is purely** speculative and is not based upon any evidence of record.

Had Claimant (as an elected official) stated his refusal to report in terms of necessity of attendance **at** a Union meeting, we would be required to consider an asserted insubordination in light of the **compulsion** of the basis for the refusal. But, the record before **us** is not in such a posture, and we state no opinion as to an ultimate conclusion under those circumstances. Suffice it to say

that we are limited to the particular record before us, and Claimant made no such assertion **on** January 12, 1973. Rather, he conceded at the investigation:

"Q. Then **what was** your reason for not going?

A. Well, as I said before, I was registered out."

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 not violated.

A W A R D

Claim denied.

NATIONAL **RAILROAD ADJUSTMENT** BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1975.

DISSENT TO AWARD NO. 20831 - DOCKET NO. SC-20806

The Majority in Award No. 20831 has erred in denying the employees' claim.

Its first error was to look to Award No. 10846 which was based on an agreement rule **contrastible** to that here present. It also erred in relying on the failure of the Claimant to advise his caller of the precise **reasons** for his unavailability; the record shows that the Carrier was apprised of his reasons not later than at the investigation, before discipline had been imposed, and in ample time to have given it due consideration. Finally, we cannot imagine a carrier management so inattentive to its affairs that it would not know who are the officers of its employees' organizations and **not** knowing the schedule of **such** organizations' meetings.

Award No. 20831 is in error and I dissent.

  
W. W. Altus, Jr.

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