

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21004  
Docket Number MW-21151

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(St. Louis Southwestern Railway Company

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

(1) The Carrier violated the Agreement when it dismissed Track Laborer Clearance Bonds, Jr. on July 17, 1974 (System File S-74-95/PR-88077).

(2) Mr. Clearance Bonds, Jr. be allowed pay for all time lost, including vacation pay, from July 17, 1974 to date of reinstatement with seniority and all other rights unimpaired.

OPINION OF BOARD: Claimant was dismissed for allegedly being absent from duty on July 16 and 17, 1974, without proper authority.

Claimant asserts that he was ill on the 16th, as a result of working in extreme heat on the preceding day. Further he testified that on July 16 he requested track laborer, Frazier - an employee with whom he customarily rode to work - to advise the foreman 88 to the reason for the absence, and he called in at 10:00 A.M. and requested that a message (to the same effect) be left for the foreman. He asserted that he did not have the Foreman's telephone number. Claimant insists that he was present for duty on July 17, but was not allowed to work.

Carrier states that Claimant had been previously warned of the consequences of continued unauthorized absenteeism. Regardless of that, he was absent the entire day of July 16 and reported 30 minutes late on the 17th. The Foreman insists that Claimant did not contact him concerning the 16th or the 17th; nor did he explain his absence and tardiness on the 17th.

Claimant testified that the Foreman never read Rules M 810 and M 811 to the gang, but the foreman stated that they had been read and discussed several times:

"M810. Employees must report for duty at the prescribed time and place, remain at their post of duty and devote themselves exclusively to their duties during their tour of duty and reside wherever required. They must not absent themselves from their employment without proper authority. They must not engage in other business without permission of the proper officer.

"**Employees** must not sleep **while** on duty. **Lying down** or **assuming** 8 reclining position, with eyes closed, or eyes covered or concealed, **will** be considered sleeping.

"**M811. Employees** must not absent themselves from their places, substitute others, or **exchange** duties without proper authority."

**Claimant** states that the **reason** he offered no explanation, on the 17th, for his prior absence **was** because the **foreman** "....didn't give me **time**. I **was** handed **my dismissal** slip and he walked **away**." He **insists** however that he and Frazier met the crew truck at the depot **at** shift **starting time**.

Claimant did not **call** Frazier 8s a witness **at** the August 1, 1974 hearing, nor did he present evidence **from** 8 D.D. **at** that time, **although** he submitted 8 September 30, 1974 **Statement** from D.D. to **Carrier** in **January** of 1975; which purported to **confirm** his testimony that he **called** the depot - for some reason - on July 16.

It **has** long been held **that** this Board is not constituted to **weigh** questions of credibility **and** to substitute Its **own judgment**, unless, of course, there **is** no basis for **such** 8 finding. Here, there is **an adequate basis** for **upholding** the credibility **determination**. Without **commenting** upon the so **called** "sole witness" concept, we do not **find** that **said matter** is properly before us. Even were we to credit **fully** Claimant's testimony, we feel it **is** quite damaging. When **an employee, who has previously been warned** about absenteeism, trusts **his** responsibility of notification to **a fellow employee, and** then fails to **call in until** 8 hours **after** shift **starting time**, he clearly **acts at his own peril**.

**There** is **substantive** evidence of record, **including Claimant's own** testimony, to support **Carrier's finding** of guilt.

**In any event, the Employees argue that** the discipline of **dismissal** **was** exceedingly **harsh** under the prevailing circumstances. Each such **assertion** must be **viewed** within the context of the record under review. This **Employee** demonstrated, **in our view, 8 rather** calloused disregard for his employment **status**. When we **add** to that the fact that there **had** been prior discussions concerning absenteeism - and 8 **written warning that** further violation of Rules **M 810 and M 811** would result in dismissal - we **are** Inclined to feel that the termination **was** not **inappropriate** in this case.

The **claim** seeks compensation for vacation pay due. **Article IV, Section 2** of the August 19, 1960 **National Agreement** supports that **request**.

Carrier states that payment for 1974 vacation has been forwarded and received. Moreover, Carrier concedes that Claimant is entitled to ten (10) days of vacation for 1975, but the record does not show that said amount has been paid. We will sustain only that portion of the claim which demands payments for vacation pay. The remainder of the claim is denied.

**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.

A W A R D

Only so much of the claim that deals with vacation pay is sustained, as noted in the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March 1976.