NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23321
THIRD DIVISION Docket Number SG-23303

John B. LaRocco, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Coast Line Railroad Company:

On behalf of Signalman K. E. Bartley, who was suspended two weeks commencing on January 8, 1979, for his alleged unauthorized absence on Monday, October 30, 1978, for pay and other benefits lost while on suspension, and that any reference to this be removed from his personal file." /Carrier file: 15-47 (79-2) J/

OPINION OF BOARD: Claimant, a signalman, was charged with violating Carrier Rules 701 and 709 for his alleged unauthorized absence on Monday, October 30, 1978. After an investigation held on December 15, 1978, the Carrier found the claimant had committed the charged offense and assessed discipline consisting of a two-week suspension.

On Sunday, October 29, 1978, claimant missed both a ride and a train to Miami, Florida. Therefore, he was forced to take a train that left Jacksonville, Florida early in the morning on October 30, 1978 and he did not arrive in Miami until 1:30 p.m. The claimant did not report to work on October 30, 1978 but did report on October 31, 1978. Before leaving Jacksonville, the claimant tried to contact his foreman but was unable to reach him at home. Though the record is unclear, claimant apparently called the Miami motel where he had a reservation for Sunday night but he did not cancel his reservation. The motel billed the railroad for claimant's room for Sunday night. Claimant's prior record shows numerous unexcused absences since 1971.

The organization initially contends that the claimant failed to receive a fair and impartial investigation in accord with Rule 47 because: 1) the organization had requested that a Carrier office construction engineer appear as a witness and the witness failed to appear and, 2) the claimant's prior record was improperly used to prejudge the claimant. The claimant does have a right under Rule 47 to call witnesses to testify on his behalf. However, the claimant has to demonstrate that the witness has personal knowledge of facts relevant to

the claim. We can find no connection between the office construction engineer and the facts underlying the claim. As to the organization's second objection, the Carrier may not utilize a prior poor absence record to show the claimant had a propensity to be absent and by implication, that he was impermissibly absent on October 30, 1978. However, the Carrier may introduce the claimant's prior work record during the hearing solely to be used to measure the amount of discipline if the Carrier finds him guilty. Third Division Award No. 20239 (Lazar). A poor work record is justification for a stricter penalty while a good record is grounds for tempering the amount of discipline. From the record in this case, we find the Carrier used claimant's prior attendance record only to determine the amount of discipline. The Carrier presented probative and objective evidence, completely divorced from claimant's record, to prove that claimant was absent on October 30, 1978.

There is substantial evidence in the record to support a finding that claimant was absent without proper authorization on October 30, 1978. The claimant argues that his absence should be excused because it was unintentional and he made a good faith effort to contact his foreman. Claimant's state of mind is not relevant to whether the absence is excused. Here, he had ample opportunity to obtain transportation to Miami but missed both a ride and the train through his own negligence. Employes have a fundamental obligation to protect their assignments. Excessive absence, especially on Mondays, disrupts Carrier operations and undermines productivity. The claimant was aware that he had to report to duty on Monday morning but he totally disregarded his obligation. Under the circumstances, we will not upset the Carrier's assessment of discipline.

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 Carrier and Employes 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: A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 19th day of June 1981.