

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24909
Docket Number CL-24998

Paul C. Carter, Referee

PARTIES TO DISPUTE: (
(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9741) that:

(a) Carrier violated the current Agreement when it imposed harsh and severe penalty on Charlie D. Simpson, Jr., for alleged violation of Rules 2, 15, and 16, General Rules For The Guidance Of Employees, 1978, and

(b) Charlie D. Simpson, Jr. shall now be reinstated to service of the Carrier with all rights unimpaired and paid for all monetary loss sustained as a result of being discharged on August 27, 1981, until reinstated, and

(c) Charlie D. Simpson, Jr. shall be paid an additional twelve per cent per annum until claim is paid.

OPINION OF BOARD: Claimant, with seniority from July 23, 1965, was the regularly occupant of a Tram Mechanic position, on the Somerville Treating Plant Seniority District, hours 7:00 A.M. to 4:00 P.M., Monday through Friday.

On July 14, 1981, Claimant reported to work at his regular starting time. About 9:30 A.M. he reported to his supervisor that he was sick and unable to work; he was given permission to leave work by the supervisor, and told that he would need a doctor's slip stating the cause of his illness before reporting for work. On July 23, 1981, Claimant reported for work with doctor's slip indicating he was able to return to work on that date. The supervisor noticed that the return to work date on the doctor's slip appeared to have been altered. Claimant reportedly told the supervisor that the doctor had released him to return to work on July 20, but he could not return to work that day because it was too late; that he took the slip back to the doctor's office and a lady there changed the return to work date to July 23, 1981.

On July 31, 1981, Claimant was notified:

"Please arrange to report to the office of Superintendent Treating Plant at Somerville, Texas at 9:00 AM on Wednesday, August 5, 1981, for formal investigation to determine the facts and place responsibility, if any, for apparent violation of Rules 2, 15 and 16 of Form 2626 Standard, General Rules for the Guidance of Employees, 1978 Edition, concerning excessive absenteeism and also being absent from duty on July 21 and 22, 1981, apparently without permission, and also apparently altering the doctor's certificate for return to work.

"You should, if you so desire, arrange for witnesses and representation in accordance with current working agreement."

Rules 2, 15, and 16, referred to in the July 31, 1981, notice, read:

- "2. Employees must be conversant with and obey the Company's rules and special instructions. If an employe is in doubt, or does not know the meaning of any rule or instruction, he should promptly ask his supervisor for an explanation. A copy of Form 2626 Std. is furnished each employe to be retained by him for his guidance."
- "15. Employees must report for duty at the prescribed time and place and devote themselves exclusively to their duties during their tour of duty. Those subject to call for duty will be at their usual calling place, or provide information as to where they may be located. They must not absent themselves from duty, exchange duties or substitute other persons in their places without proper authority."
- "16. Employees must not be careless of the safety of themselves, or others; they must remain alert and attentive and plan their work to avoid injury."

Employees must not be indifferent to duty, insubordinate, dishonest, immoral, quarrelsome or vicious.

Employees must conduct themselves in a manner that will not bring discredit on their fellow employes or subject the company to criticism or loss of good will."

The investigation was postponed and conducted on August 19, 1981.

On August 27, 1981, Claimant was notified:

"Based on the facts developed in formal investigation held in the office of Superintendent Treating Plant at Somerville, Texas, on Wednesday, August 19, 1981, it has been determined that you were in violation of Rules 2, 15, and 16 of the General Rules for the Guidance of Employees, Form 2626 Standard, 1978 Edition, for being absent from duty without permission on July 21 and 22, 1981, and also altering the doctor's certificate for return to work and also being excessively absent from duty.

"The decision is that you be removed from service effective immediately. You should turn in to your supervisor any company owned property in your possession."

The Organization has raised a number of objections, one because the charging officer conducted the investigation and rendered the decision. Many awards of this Board have upheld the same officer acting in these roles. Complaint is also made that the charge was not precise as required by Rule 18(b). We have examined the charge and we find that it advised the Claimant of the actions complained of with sufficient specificity to enable Claimant and his representative to prepare a defense. The charge met the requirements of the agreement. We find that none of Claimant's substantive procedural rights was violated. The Carrier advises that the procedures followed in this dispute were in accord with established practices on the property.

There was substantial evidence adduced in the investigation in support of the charge against the Claimant. Discipline was warranted; however, permanent dismissal, considering Claimant's length of service, was excessive. The time that Claimant has been out of service should constitute sufficient discipline. We will award that Claimant be restored to service with seniority and other rights unimpaired, but without any compensation for time lost while out of the service. Claimant should understand, however, that his absentee record is expected to be improved.

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 discipline imposed was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1984.