

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25630
Docket Number CL-26042

Referee John W. Gaines

(Brotherhood of Railway, Airline and Steamship Clerks
PARITES TO DISPUTE: (
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9935) that:

"1. Carrier violated the Agreement Rules, particularly Rule 21, when under date of February 2, 1984, it dismissed Mr. J. L. Baker from the service of the Carrier on the basis of a formal hearing held January 26, 1984, and

2. Carrier shall be required to compensate Mr. J. L. Baker for all time lost as a result of the dismissal and return him to the service of the Carrier with all rights unimpaired."

OPINION OF BOARD: Claimant was dismissed from service following an investigative hearing held by Carrier as scheduled.

Carrier's notice of investigation, dated January 20, 1984, and scheduling the hearing for January 26, 1984, sets out the charge to be investigated against Claimant as follows: 'Your responsibility for your failure to protect your assignment; specifically, your absence from duty on Tuesday, January 17, 1984.'

Carrier's published instructions on absenting procedures as they apply to Claimant, a first shift **employee**, state:

"Employees requesting authority to absent themselves from their assignment due to personal emergency or illness shall do so by contacting our Chief Clerk on 547-4371, between the hours of 8:00 a.m. and 8:30 a.m."

The hearing transcript covers 26 numbered pages, and 21 pages thereof contain some remarks of, or testimony given by, Claimant. He was **afforded** in the stretch of that period every opportunity to adduce evidence showing active steps on his part in preparing on January 16 and 17 so as adequately to protect his work assignment on January 17, 1984, as well as evidence critical in showing a personal emergency or illness on his part if he was able to make out such a case.

Indubitably, the Hearing Officer evaluated Claimant's evidence as insufficient inasmuch as he dismissed Claimant from service by Discipline Notice dated February 2, 1984. It is the Hearing Officer's function, not ours, to sift and weigh evidence and observe each witness as to demeanor and to content as he testifies. The Hearing Officer could reasonably have concluded that the discipline imposed was proper based on the investigative hearing transcript, and nothing emerges therefrom which strikes us in any way as arbitrary or capricious. We will deny the **claim**.

Two matters of smallness loom large according to the **ex parte** submissions.

First, the Organization points out that missing one day of work precipitated a dismissal, that penalty being on its face grossly excessive and requiring modification. But background facts coupled with that bare fact materially affect what could otherwise appear as amounting to the drastic discipline pointed out.

We can always consider the background facts as taken from the prior record. The Organization's Exhibit No. 7 which is a copy of this employee's personal record evidences a **15-day** suspension in 1982 for his failure to protect assignment followed, all in 1983, by **two** successive letters of Reprimand for instances of the same failure and then discharge for another instance of the same failure. On January 3, 1984, and under obligation to improve, Claimant was reinstated to service **from** that discharge, but specifically on a probationary basis; within the first two weeks of the **1-** year probation Claimant, under his conditional reinstatement. forthwith absented himself on the day in question which prompted his dismissal.

Claimant's same actions, **unabating** infractions, were of his own doing and he allowed them to continue at his peril despite more than adequate notice, prompting us to conclude that the dismissal was not without a fair and impartial investigation as mandated by Rule 21 being invoked by the Organization. In this Division's Award 22240 involving an employee who had been discharged for failure to protect her assignment we stated:

"...**By** an agreement dated August 25, 1976 she was reinstated on a leniency basis with the stipulation that she would be on probation for one year. That agreement is controlling in this case (see First Division Award 23025) since the infraction herein took place less than three months after the signing of the agreement. Claimant's conditional reinstatement in August **was** abrogated by her actions in this matter.'

Second, the expense to Claimant for round trip fare on January 17 between home and **work totalled** \$2 in carfare on available public transportation. Claimant had run out of funds and did not as **a preparatory matter** **raise** the money on January 16 **or** 17. Claimant admitted he knew beforehand the cost was going to be \$2 to ride to and from **work** that morning. but offered no evidence of any attempt by him to find an alternate **means** of getting to work on January 17 or any attempt by him to **earn** or borrow \$2 on that day or the day before. As somewhat a side issue, Claimant testified he had phoned Carrier early in the morning and that under Carrier's procedure he had received oral authorization for his being absent that day. A binding decision reached on absenteeism from telephoned information **would** generate misunderstanding and problems.

It develops under Carrier's actual procedure that nobody in authority ever approved of Claimant's absence and that, as one outcome of the completed hearing, it was only then finally proved up that being short of \$2 carfare falls woefully short of being accepted as a valid personal emergency or illness under the procedure.

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

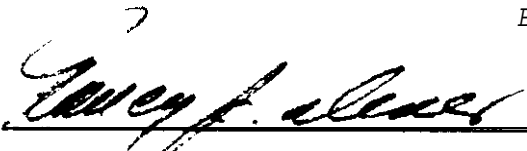
That the Agreement was not violated.

AWARD

Claim denied,

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1985.