

SM
2P
11/19
move

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25825
Docket Number MW-25684

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Chesapeake and Ohio Railway Company (Southern Region)

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

(1) The Carrier violated the Agreement when without just and sufficient cause, it improperly issued an "Appendix B" letter on November 26, 1982, and an "Appendix C" letter on January 12, 1983, to B&B Mechanic S. Byrd (System File C-TC-1571-/MG-3861).

(2) The letters referred to in Part (1) hereof shall be removed from the claimant's record and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: In a 1977 Memorandum of Agreement the Parties agreed to a method of handling discipline for absenteeism. Section 4 of that Memorandum states:

"An employee who is absent from duty without permission from proper authority and who has already been given the warning letter prescribed in Section 2 hereof and who has been assessed five (5) days overhead suspension by a second letter as provided in Section 3 hereof will be given a subsequent letter in the form attached as Appendix C to this Agreement and will be assessed ten (10) work days actual suspension."

Sections 2 and 3 define the infraction in the same way, i.e. "absent from duty without permission from proper authority" and provide for a warning letter (Appendix A letter) and a five day overhead suspension (Appendix B letter) respectively. Section 5 provides for discharge for an offense committed after a ten day suspension.

Claimant was absent on November 17, 18 and 19, 1982. Upon return to work he supplied a statement from a doctor dated 11/19 stating he "should not have been working the past 3-4 days." He subsequently received the following:

"You have been absent without permission from proper authority on the following dates:

November 18 and 19, 1982.

"Rules and instructions governing Maintenance of Way employees require that no employee absent himself from duty, nor engage a substitute to perform his duties without permission from the proper authority. Employees must report for duty at the designated time and place.

As you have previously been given a warning letter on January 23, 1979 concerning your unauthorized absences, discipline of five (5) days overhead suspension with three (3) months probationary period to run to Feb. 26, 1983 is now being assessed."

This letter bears no date but was apparently issued on November 26, 1982. On January 12, 1983 another letter issued alleging absence without permission from proper authority on December 21 and 22, 1982 and assessing 10 days actual suspension.

The premise of the claim is that the 5 day suspension was improper and therefore the 10 day suspension was also. In a letter to the General Chairman asking that claim be filed Claimant said:

"Also I would like to say that I did call in on Nov. 18th, 1982 before 7:00 A.M. and was given permission to be off, also on Dec. 21st and 22nd I called and was given permission to be off because of sickness."

Claimant enclosed a statement from his girl friend in which she states "I drove Steven Byrd to the pay phone on the morning of November 18 and 19, 1982 so that he could call in sick to C & O. Although I did not actually hear him speak with them"

In declining the claim Manager Engineering Niehaus stated Claimant did call in on November 17 and received permission to be off on that day only. He denied any call was received on November 18 or 19. In response the Organization argued that in view of his November 17th call supervision "should have had enough judgment to know he was still sick on the 18th and 19th." By letter of April 11, 1983 to the General Chairman the Carrier asserted that in view of claimant's record of chronic absenteeism ... he has been instructed on numerous occasions that he must contact Supervisor Whitaker in the Division Office to receive authorization for each day he is to be absent" Carrier alleged Claimant was absent 105 days in 1982 and further asserted Claimant "did not mention the possibility that he would miss more than one day ...," when he called on the 17th.

The Organization's position is really two fold. It argues there is no requirement that an employe obtain permission on a day by day basis for a continuing illness and in any event Carrier has submitted no evidence Claimant did not make prior arrangements. The Organization complains six documents attached to Carrier's Ex Parte Submission relating to discipline of Claimant in the past due to absences without permission (Exhibits A through F) were not presented or discussed during handling on the property and are not properly before the Board. While we note Carrier's references to Claimant's history of absences we agree with the Organization and have disregarded those Exhibits except to the extent that individual letters may have been specifically referred to in the letters forming the basis for the instant claim.

We view the language of the 1977 Memorandum as quite clear. It describes the level of discipline to be assessed "an employe who is absent from duty without permission from proper authority". Implied in the rule, like all rules, is the requirement that its application will not be unreasonable and this seems to be the answer to the Organization's contention that daily authorization is not necessary in a continuing illness. Numerous examples could easily be cited where a daily permission requirement would not be reasonable. But it is equally not reasonable to hold that when an employe reports ill he receives open ended authorization for absences. The only reasonable position seems to be that the grant of permission is as extensive as the request in the absence of agreement to the contrary.

Carrier states here Claimant received authorization to be off on November 17. Claimant does not state otherwise. In fact, he submitted a statement designed to show that he called on the 18th and 19th also. These calls would have been unnecessary if he understood the November 17 authorization to extend beyond the one day. We do not believe it is for this Board to extend the authorization beyond that which was granted and understood to have been received.

We find the statement from Claimant's girl friend insufficient to establish the calls were received. She admittedly heard no conversation and we note that in his original letter Claimant only refers to calls on November 18, December 21 and 22.

We stress that as we see this claim the issue is not whether Claimant was legitimately ill, as we assume he was. Nevertheless there is no evidence Carrier was informed the absence would be longer than one day. In handling on the property Carrier described Claimant as a chronic absentee and cited the number of days he was absent during 1982. This was not rebutted or challenged. In the circumstances we cannot find Carrier acted unreasonably.

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:


Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 13th day of January 1986.

