

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27005
Docket No. MW-27554
88-3-86-3-820

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Southern Pacific Transportation Company
(Eastern Lines)

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

(1) The dismissal of Track Laborer E. Allen, Jr. for alleged '*** violation of Rule M810 ***' when he '... left the job after working two hours ***' on September 18, 1985 was without just and sufficient cause, arbitrary and on the basis of unproven charges (System File MW-85-153/443-3-A).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This dispute is one of two cases now pending before our Board involving the Claimant. The other dispute is dealt with in Third Division Award 27006.

On September 18, 1985, Claimant reported for work as a track laborer on Extra Gang 53. After working two hours he claims that he told his Track Foreman that his hands were developing blisters. Shortly thereafter he left the job site. He has not worked for the Carrier since that date.

About a month after leaving the job, on October 21, 1985, Carrier's Division Engineer forwarded a letter to Claimant alleging that he was absent without authority. He was instructed to report to his job assignment as soon as possible for return-to-duty instructions. Claimant did not respond to this request during the following week.

On October 29, 1985, Carrier charged Claimant with being absent from his job since September 18, 1985, in violation of Rule M810. This notice scheduled a formal investigation for November 11, 1985. At the investigation Claimant was present and testified. He was represented by an officer of the Organization. Following the investigation, Claimant was notified that he was dismissed.

It is our view that adequate evidence and testimony exists in the investigation transcript to demonstrate that Claimant was in violation of Rule M810 on September 18, 1985, and thereafter, when he left the work site without permission and remained away for over a month. It is clear, from the evidence, that the only Supervisor that Claimant talked to at the time he left his job was his Track Foreman. Statements by both are in accord that the Track Foreman did not give Claimant permission to leave. In fact this Foreman was not cloaked with authority to allow Claimant permission to leave the job site.

There is evidence in the investigation transcript that two other Supervisors were at the site at the time, one a General Foreman and the other a Roadmaster. Both are authorized to allow employees to leave work. However, Claimant admits that he did not talk to or request permission of either to layoff or leave work that date.

The Claimant claims that he left the job site after unsuccessfully trying to work with blistered hands. His purpose in leaving was to seek immediate medical attention. At the investigation he submitted documents to support this contention. We have carefully examined the material submitted and find it defective for this purpose. For example one item of medical evidence indicates that Claimant visited a doctor on September 19, 1985, the day after he left work, ostensibly seeking immediate medical attention for blisters. This document, under the category of "History," indicates that the complaint generating the visit occurred on September 17, 1985, not September 18. Also, the stated diagnosis is not blisters but "Possible carpal tunnel syndrome." This syndrome results from a complaint quite dissimilar to blisters caused from using a pry bar. It is pressure on the median nerve at the point at which it goes through the carpal tunnel of the wrist causing soreness, tenderness and weakness of the muscles of the thumb.

This is noteworthy for several reasons. The document deals with a Surgeon's examination of Claimant's hands, or at least one hand. It does not make a single reference to blisters. The examining Surgeon made a detailed effort to describe Claimant's complaint on pain in his hand and wrist but makes no mention of blisters or any flesh or skin abnormalities or complaints.

One would think that if an individual was suffering from blisters, so severe as to require leaving his job to seek medical attention, that he would have mentioned the condition to the examining Surgeon as part of his complaint. Also, a trained medical practitioner examining hands of a patient the day after he was prevented from working because of blisters would have noticed the condition and made some type of notation about it.

Accordingly, it is our view that the evidence submitted by Claimant and his testimony simply do not support his version of the event. It is our view that Carrier has established a violation of its Rule M810 and that Claimant has not demonstrated that he had permission to be absent. Also he has not demonstrated that there were compelling medical conditions that prevent him from working or securing authority to be absent.

Many Awards of this Division have held that employees that have remained away from work for extended periods of time without authority need not be continued in service. The Claimant is not a stranger to Rule M810. In six years of employment he has had three prior entries in his service record concerning violations of this Rule. The first resulted in 30 demerits. The second a 4 day suspension. The third resulted in dismissal, after which he was later reinstated on a leniency basis, but without pay for time lost. Under these circumstances discipline of dismissal for this most recent established breach of Rule M810 is not inappropriate. The Claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1988.