

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (Wayne Watts
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(Atchison, Topeka & Santa Fe Railway Company

STATEMENT OF CLAIM:

"Carrier violated the rules of the current clerks' agreement at Richmond, California, when it wrongfully removed me from service on August 10, 1984, as a result of a formal investigation held on July 26, 1984, and I shall now be returned to Carrier service and paid for all loss of wages and benefits commencing on July 6, 1984."

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 waived right of appearance at hearing thereon.

The original Notice of Investigation was dated July 6, 1984, and scheduled a Hearing for July 11, 1984. The same day the Carrier amended the notice to include a possible violation of Rule 13. On July 10, 1984, the Claimant requested a postponement. On July 11, 1984, the following Consolidated Notice was issued:

"Please refer to my amended notice to you dated July 6, 1984, to attend formal investigation at Trainmaster's Office, Richmond, California.

This is to advise that formal investigation scheduled to be held in the Trainmaster's office at Richmond concerning your allegedly being absent without proper authority on June 26, 1984, and all subsequent dates, involving possible violation of Rules, 2, 13 and 15, Form 2626 standard, General Rules for the Guidance of Employees is hereby postponed until 10:00 A.M., July 26, 1984, per your written request of July 10, 1984.

Please acknowledge receipt of this notice on attached copy and return to office of Assistant Superintendent, Richmond."

Subsequent to the investigation, the following notice of discipline was issued:

"As result of formal investigation conducted in Trainmaster's Office, Richmond, CA 10:00 AM July 26, 1984, concerning your being absent without proper authority on June 26, 1984, and all subsequent dates, it has been determined that you are in violation of Rules 2, 13 and 15, Form 2626 Standard, General Rules for the Guidance of Employees, and you are hereby dismissed from the service of this company for your responsibility.

You should arrange to return all company property in your possession, including Amtrak Pass.

Please acknowledge receipt of this letter on attached copy and return to my office."

After reviewing the record, the Board is compelled to conclude that the Claimant received a fair Hearing and that the evidence presented at the Hearing more than substantially supports the discharge.

It is clear that on June 26, 1984, the Claimant called in at 2:45 p.m. and reported off for this 4:00 p.m. shift. He did not contact the Carrier again until 11 days later when he called on July 6, 1984, to mark up. The Claimant admitted at least three times in the investigation that he failed to call the Carrier during this period. Moreover, there simply was no good reason to excuse his failure to notify the Carrier of his absence.

The mere fact he failed to give notice of his absence is enough to justify significant discipline. Additionally, it is apparent the Claimant did not have any valid reason to be absent on all the dates in question. He presented a notice from a doctor, which read liberally, only explains his absence on June 28 and July 5, 1984.

To put it plainly, it is not proper conduct under the rules to call in and lay off for a shift on June 26, 1984, and then not call or report for 11 days with no apparent reason.

The remaining question is whether discharge is the appropriate penalty. In this regard, it is noted the Claimant was dismissed approximately two years previously for similar rule violations. He was reinstated on a leniency basis with the expectation he would protect his assignment. The instant incident and the Claimant's attendance record show he has not lived up to his employment responsibilities.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Devet - Executive Secretary

Dated at Chicago, Illinois, this 20th day of July 1988.