

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

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10130) that:

(a) Carrier violated the current Clerks' Agreement at Amarillo, Texas, when on August 9, 1985, it dismissed R. L. Hughes from service, and

(b) Facts developed at the formal investigation held on August 8, 1985, failed to sustain Carrier's alleged charges and did not justify or warrant the harsh penalty imposed, and

(c) R. L. Hughes 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 9, 1985, until reinstated, his personal record cleared of all charges, and

(d) R. L. Hughes shall be paid an additional twelve per cent per annum until claim is paid."

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 Claimant was instructed to attend formal Investigation " ... concerning report that you have been allegedly absent without proper authority since June 29, 1985, and have allegedly failed to secure Form 1516 Standard, Leave of Absence; further report that your work record for period March 1, 1985 to July 8, 1985, is unsatisfactory, same reflecting an approximately 51 per cent absenteeism and review your record to determine the facts and place responsibility, if any, for possible violation of Rules 2, 13, 14 and 15 of General Rules for the Guidance of Employees."

Following the Investigation Claimant was found guilty as charged and dismissed from the Carrier's service.

The Organization seeking to have the Carrier's action set aside contends that the notification of charges against the Claimant was not precisely stated. It further argues that the Claimant was not absent more than ten days which under Rule 13 would have required him to seek a leave of absence and that the charges were not proven. The Organization further alleges procedural violations by the Hearing Officer during the Investigation.

As to the first charge against the Claimant that he was absent from June 29, 1985, to July 8, 1985, there was testimony by the Carrier's Chief Yard Clerk that the Claimant called on June 28, 1985, to mark off on grounds that his granddaughter was ill and had to be taken to the hospital. The witness further testified that he had received instructions from the Regional Freight Office Manager that the Claimant was to call the Manager if he wished to mark up and the Clerk so advised the Claimant. The Claimant reportedly replied that he would handle it with the Manager.

There is no dispute that Claimant did not contact the Manager although the Claimant testified he told the Clerk to mark him off because he was ill. The Claimant further testified that the Clerk had told him the Manager had issued no special instructions about the Claimant. The Regional Manager's testimony fully corroborated the Clerk's testimony.

As to the second charge dealing with excessive absenteeism, the Manager testified that during the period March 1, 1985, through July 8, 1985, the Claimant was absent approximately 50 per cent of the time as follows:

"March 1 - 5	May 10 - 14
March 15 - 19	May 18
March 29 - 31	June 2
April 1 - 7	June 10
April 22	June 18 - 27
April 30	June 28 - 30
May 1 - 7	July 1 - 8"

The Regional Manager further testified that he had a conversation with the Claimant concerning his absentee problem at various times including May 24, 1985. A letter concerning the conversation was read into the record. The Claimant acknowledged that he met with the Manager on May 24, 1985, but that though the Manager referred to a problem the exact nature of the problem was never identified to the Claimant who did not inquire further. The Claimant did acknowledge other occasions in which the Manager discussed the Claimant's absentee record with him.

As this Board functions in an appellate capacity, its scope of review is limited. Although there is some conflict in the testimony, this Board has held that credibility determinations are made by the Hearing Officer rather than the Board. (See Third Division Awards 24991, 25102, 25134). The Board therefore finds that as to the merits the Carrier has proven the Claimant's culpability as charged.

As to the procedural issues raised by the Organization, we find that the notification of charges was sufficiently precise to enable the Claimant to prepare his defense. Also the fact that the Hearing Officer played multiple roles at the Investigation did not in this case deprive the Claimant of his due process rights under the Agreement. (See Third Division Awards 24544, 24640, 25039, 25381).

Although the Carrier did endeavor to call the witnesses requested by the Organization, in the absence of any evidence that they had any relevant information or of any Agreement provision that required the Carrier to call witnesses on behalf of the Claimant, the Carrier was not required to call additional witnesses. (See Second Division Award 9323. See Third Division Awards 20867, 20984, 23857). It should be noted that despite repeated inquiries by the Hearing Officer, the Organization did not specify the reason it wished to have the witnesses called. The Carrier's action was fully warranted by the facts of this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest

  
Nancy J. Dwyer - Executive Secretary

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