

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company

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

(1) The Agreement was violated when the Carrier terminated the seniority of Extra Gang Laborer R. L. Springsteed for alleged absence without proper authority for five (5) workdays, November 14, 15, 16, 17 and 21, 1988 (System File D-125/890119).

(2) The Claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered as a consequence of the violation referenced in Part (1) above."

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 dispute in this case centers around Carrier's termination of Claimant on November 28, 1988, because, according to Carrier, Claimant was absent from service without proper authority on November 14, 15, 16, 17, and 21, 1988. This action by Carrier was taken under the provisions of Rule 48(k) of the Agreement which provides:

"Employees absenting themselves from their assignment for five (5) consecutive working days without proper authority shall be considered as voluntarily forfeiting their seniority rights and employment relationship, unless justifiable reason is shown as to why proper authority was not obtained."

Before we address the respective parties' arguments and contentions on the merits, there is one procedural contention raised by the Organization to be examined. The Organization contends that Carrier's Exhibit "N" to their Ex Parte Submission is new evidence which was not presented during the on-property handling of this dispute. We have examined this document and find that it is dated April 4, 1989, well within the time frame of the on-property handling of this dispute. We do not, however, find it specifically referenced in any of the Carrier's communications issued during the on-property handling. We will, therefore, not consider Exhibit "N" in making our deliberations.

The Claimant was granted permission to be absent from his assignment on November 9, 1988. By notice posted November 9, 1988, Claimant's position, along with several other positions in Gang 7810, was announced to be abolished effective at close of work on Friday, November 15, 1988. The Organization contends that on November 10, 1988, "Claimant experienced mechanical failure (transmission) of his pickup truck, and was prevented from reporting for his assignment." Carrier does not specifically address this alleged absence on November 10, however, in its letter to the Organization dated December 14, 1988, the Carrier stated:

"Investigation of your alleged claim reveals Mr. Chad Winn, Foreman, instructed his gang on Thursday, November 10, 1988, that the gang was being held over their abolishment deadline and were going to work until the end of November and they should report to Provo, Utah, Monday, November 14, for work. In addition to Mr. Winn several laborers will testify they as well as Mr. Springsteed were present when the above instructions were issued."

On November 14, 1988, Claimant began driving from Pocatello, Idaho, to Provo, Utah, where the gang was working. Because of inclement weather, Claimant did not arrive at Provo until well after the starting time of the gang and therefore did not work with the gang on November 14, 1988.

The contentions of the parties continue to go in opposite directions. The Organization argues that when Claimant was granted permission to be off duty on November 9, 1988, the Carrier's Manager Truck Maintenance informed him (Claimant) that "although the gang would probably work through November 18, 1988, it was not compulsory for the Claimant to work after November 15, 1988." Carrier denies that any such information was given to Claimant. The Organization argues further that Claimant, on November 15, 1988, contacted Gang Management System and was told there was a vacancy he could fill in Las Vegas, Nevada. The Organization continues that: "Mr. Kraft did not inform the Claimant that Gang 7810 was to continue working through November 30, 1988." Carrier, however, contends that: "On the same day, November 15, 1988, Claimant was informed by GMS that Gang 7810 was still working." The Organization continues that inasmuch as two (2) other gangs were also scheduled to be abolished on November 15, 1988, "the Claimant anticipated that he would be displaced following that day. He therefore, did not report for work on November 16, 17, and 18, 1988." Carrier says that "Mr. Springsteed made no effort to report to the gang between November 15 - 30, 1988."

This Board cannot and will not attempt to resolve conflicts in evidence and testimony. We have absolutely no way of knowing what Claimant was told on November 9 or 10 or 15, 1988. What we do know from this record is that the Claimant was absent from his assignment on November 14, 15, 16, 17 and 21, 1988. We do not know what significance the Organization's reference to November 18, 1988, has in this case. We do know from this record that Gang 7810 was, in fact, worked until November 30, 1988. We know from this record that a second abolishment notice was issued on November 22, 1988, announcing the abolishment of the gang effective November 30, 1988.

Rule 48(k) is a self-executing rule. It has been interpreted by many tribunals to mean exactly what it says. In the record of this case, there has been no justifiable reason given as to why proper authority was not obtained for absence on the five (5) consecutive working days here involved. This Board has no recourse but to uphold the action as taken by the Carrier. The Claim is 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 29th day of January 1991.