

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31440
Docket No. MW-31869
96-3-94-3-187

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Chicago Central and Pacific Railroad Company

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

(1) The five (5) day suspension imposed upon Trackman T. Jackson for alleged violation of Rule 532 and certain Carrier instructions because of failure to report for duty and protect assignment and being absent without authority on July 19, 1993 was on the basis of unproven charges and in violation of the Agreement.

(2) As a consequence of the violation referred to in Part (1) above, the Claimant's record shall be cleared of all 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 employee or employees involved in this dispute are respectively carrier and employee 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.

On July 19, 1993 Claimant did not report for work. On July 30, 1993 Claimant was advised to report for an Investigation on August 6, 1993 concerning his "alleged failure to report for duty and protect assignment at the designated time and place, and absenting yourself without proper authority on Monday, July 19, 1993." The Hearing was held, as scheduled, and on August 20, 1993 Claimant was advised that he had been found guilty of violating Rule 532 and certain Carrier instructions and that he was suspended for five working days.

The Organization contends that Claimant was denied a fair Hearing because he was not given proper notice of the charges against him, and because he was found guilty based on hearsay evidence. The Organization contends that Claimant complied with all Carrier directives and Rules and that the discipline imposed was improper.

Carrier contends that Claimant was provided with a fair Hearing. Carrier maintains that the hearsay evidence was not relevant to Claimant's conviction and that the evidence shows that Claimant was absent without proper authority on July 19, 1993.

Rule 532 provides, in relevant part, that employees "must not absent themselves from duty . . . without proper authority." Although the Notice of Investigation did not quote Rule 532, it did advise Claimant that he was charged with absenting himself without proper authority. Claimant was clearly on notice as to the charges and the notice clearly was sufficient to enable him to prepare a defense.

The record established that Claimant worked as a mobile Track Laborer. Although he received a per diem allowance for lodging, meals and transportation expenses, Claimant depended on another employee to give him a ride to work. On July 19, 1993, the other employee was sick and unable to give Claimant a ride.

Under Carrier's procedures, Claimant was to call the Assistant Roadmaster or his Foreman to obtain permission to absent himself from work. Claimant did not call those individuals. They were en route to work and Claimant could not have reached them. Claimant did call the Roadmaster.

The Roadmaster did not testify at the Investigation. The Assistant Roadmaster testified that the Roadmaster told him that he (the Roadmaster) had told Claimant that Claimant should not rely on others for transportation and that Claimant should report to work if he were able to get there. Claimant objected to the Roadmaster not being present at the Hearing and maintained that the Roadmaster did not tell him to report for work if he were able to do so. The Assistant Roadmaster's testimony regarding the Roadmaster's statements is the subject of the Organization's hearsay objection.

Our review of the record developed on the property leads us to conclude that the hearsay evidence was irrelevant to the matter under investigation. Claimant testified that the Roadmaster did not give him permission to absent himself from work. According to Claimant, the Roadmaster merely acknowledged Claimant's report that he was unable to get to work. Claimant also testified that he was responsible for his own transportation to work and that the failure of his ride was not a valid excuse for missing work.

Form 1
Page 3

Award No. 31440
Docket No. MW-31869
96-3-94-3-187

Thus, Claimant's own testimony established that he was guilty of violating Rule 532, the violation for which the discipline was imposed. Accordingly, the claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of April 1996.