

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36122
Docket No. MW-36058
02-3-00-3-203

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Speed Swing Operator Shawn P. Pizzi for his alleged unauthorized absence on September 14, 15, 16, 17 and 18, 1998 in violation of Rule 1.15 was without just and sufficient cause (Carrier's File 1173245 SPW).
- (2) Speed Swing Operator Shawn P. Pizzi shall now be reinstated to service with seniority and all other rights unimpaired, compensated for all wage loss suffered and have his record cleared of the incident.”

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 were given due notice of hearing thereon.

The parties to this dispute are clear on the property that this is a claim handled "under the self-invoking provisions of Appendix 'R'." There is no argument on the property: the Investigation required the Claimant "to meet his burden of proof" to maintain his employment relationship.

The Claimant was absent on September 14, 15, 16, 17, and 18, 1998. The transcript contains testimony from the Claimant to support his position. The Claimant argues that he was absent due to medical problems and calls were made to the Carrier to obtain proper authority. The record indicates that the Claimant worked his last day on September 12 and had September 13 as a rest day. On the morning of September 14, 1998, the Claimant testified that he had an allergic reaction to a new medication which left him in respiratory arrest and comatose. The Claimant testified that he did not regain consciousness until September 16, 1998. Thereafter, he had calls made to the Carrier by his ex-wife, girlfriend and his Union representative.

The Organization points out that the Carrier did not request the testimony of the Union representative. It also points out that the Claimant's failure to contact the Carrier was never proven in the record. In fact, the Claimant did obtain the assistance of others to contact his supervisors as soon as he was able to regain consciousness. Those contacts to his supervisors were never returned.

The Carrier does not agree. It maintains that the Claimant did not attempt to contact the Carrier and was in fact absent without authority. The Carrier notes that in the Claimant's brief history with the Carrier, he had knowledge of the proper procedures and phone numbers to establish contact and obtain permission to be absent. The Carrier maintains that the Claimant provided only evidence of two ambulance rides and a letter that he was under care for "stress related medical conditions." The Carrier does not find any evidence to support the case that the Claimant could not have contacted his supervisors during the time in question or that anyone else made an attempt to do so.

The Board finds that the evidence does not support the Claimant in the instant case. Even if the Union representative had testified, the Claimant stated that no contact had been made. The Claimant testified that:

"... (the union representative) had made efforts to contact Mr. Maddex, without any avail. He said that he tried to leave messages. He tried to call

the yard. And never got any response from Mr. Maddex. And frankly, I got the same response from my wife, also."

Through all the discussion of telephone records and voice mail, there is no proof whatsoever in this record that any call was made. Even ignoring the first few days, the Board can find no persuasive evidence that the Claimant had attempted to contact the Carrier in the last few days of his absence. The Claimant argued that he could provide phone record proof. There was none ever submitted. Supervisor Maddex testified that there were no problems with his pager system, and that for the entire week nothing was heard from the Claimant.

Given the record at bar, the parties understand that this is an Appendix "R" proceeding and that the Claimant must present sufficient evidence that he was not absent without proper authority (Public Law Board No. 5396, Award 28). He did not do so. Following Supervisor Maddex's statement that no contact was ever made advising of the Claimant's medical situation, the Claimant did not produce evidence of any phone record indicating a call was ever made. Nor was there any testimony or letter from his former wife, Union representative or girlfriend that a message was left. Nor did the Claimant prove that he had made a call or present evidence that he lacked access to a phone when transferred to Charter Hospital. What is in the record is testimony from the Carrier that notification was never received.

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 22nd day of July 2002.