

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36306
Docket No. MW-36480
02-3-00-3-751

The Third Division consisted of the regular members and in addition Referee Nancy F. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Burlington Northern Santa Fe Railway
((former Burlington Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [Level 2 with a five (5) day suspension and a two (2) year probation period] imposed upon Mr. M. W. Taylor for his alleged violation of MOW Operating Rule 1.13 ‘Reporting and Complying with Instructions’ and MOW Operating Rule 1.15 ‘Reporting of Absence’ in connection with an alleged absence from duty without proper authority on August 6, 1999 while assigned as section laborer on Rochelle East Section was without just and sufficient cause, based on unproven charges and in violation of the Agreement [System File C-99-S090-17/10-99-0351(MW) BNR].
- (2) As a consequence of the violation referred to in Part (1) above, Mr. M. W. Taylor shall now have all reference of this discipline cleared from his record and he shall be paid for any and all lost wages.”

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.

On August 6, 1999, the Claimant was scheduled to commence work at 7:00 A.M. The Claimant asserts that at approximately 5:00 A.M., he awoke with a migraine

headache which was "so severe" that he asked his wife to contact Roadmaster Goy because he was "too sick" to make the call. According to the Claimant, his wife obtained the Roadmaster's phone number and left a message explaining that her husband was ill and not able to report for work. However, when the Claimant's Foreman reported his absence to the Roadmaster, Mr. Goy stated that he had not received a message from, or about the Claimant.

As a result, on August 12, 1999, the Carrier sent (the Claimant) the following directive:

"Attend investigation in the Roadmaster's office at 8:00 A.M. hours on Thursday, August 19, 1999 for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged unauthorized absence from duty without proper authority on August 6, 1999 while assigned as a section laborer on Rochelle East Section."

Subsequent to two postponements the Investigation commenced on September 9, 1999 after which the Claimant was informed that:

"As a result of investigation afforded you on September 9, 1999, you are hereby notified that you are being issued a Level 2-Five (5) day suspension, commencing October 11, 1999 for violation of MOW Operating Rule 1.13 'Reporting and Complying with Instructions' and MOW Operating Rule 1.15 'Reporting of Absence'.

In addition, this begins a probationary period of two (2) years. If you commit another rule violation during this period, you will be subject to further discipline.

In accessing discipline consideration was given to your personal record. This letter will be placed in your personal file."

The Organization protested the discipline, maintaining at the outset that the Claimant's Investigation was not impartial, nor had the Claimant been afforded the due process to which he was entitled. Specifically, the General Chairman asserted that:

"It is obvious throughout the transcript the conducting officer was not trying to function as a finder of facts, but instead had already determined the Claimant's guilt and was only going through the process in order to justify the discipline."

The General Chairman further stated that:

“Reading the transcript it is clear that Mr. Taylor’s wife called in and left a message that Mr. Taylor would not be at work that day because of his migraines. It is up to the Carrier to prove its charges against Mr. Taylor and had every opportunity through the phone records to do so and chose not to. I am requesting that the Carrier, by failing to prove the charges against Mr. Taylor, remove all discipline from Mr. Taylor’s record and pay him for any and all loss of wages.”

The Carrier denied the claim maintaining that the Claimant’s Investigation was conducted in a fair and impartial manner, with “no exception taken.”

Regarding the merits of the issue, the Carrier contended that the Claimant violated Rules 1.13 and 1.15 of the Agreement when he failed to properly report the August 6, 1999 absence, thereby rendering the assessed discipline warranted in the circumstances.

At the outset, the Organization asserted that the Carrier violated the Claimant’s due process rights and prejudged him. However, there is no evidence on this record which supports such assertions. Specifically, we find no fatal flaws regarding the Hearing Officer’s handling of the Investigation, nor do we find evidence that the Claimant was prejudged, or that his Agreement rights were violated in any way.

Turning to the merits of the dispute, the Claimant was charged with violating Rules 1.13 and 1.15. In pertinent part, those Rules state that:

“Rule 1.13. REPORTING AND COMPLYING WITH INSTRUCTIONS:

Employees will report and comply with instructions from supervisor who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties.

Rule 1.15. REPORTING OR ABSENCE

Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. Employees must not leave their assignment, exchange duties, or allow others to fill their assignment without proper authority.”

The Rules that the Carrier charged the Claimant with violating are clear and unambiguous. The Claimant did not have the proper authority to miss work on August 6, 1999, and was therefore required to report for duty. When the Claimant failed to report for work, he was in violation of these Rules.

The Claimant asserts that he told his wife he was sick and could not report for work. He then alleges that his wife phoned the Roadmaster and left a voice message explaining that her husband was sick and would not be in that day. However, in these circumstances, the Organization failed to submit any evidence to support what the Claimant is alleging as true. Specifically, the Organization provided no evidence such as a copy of a phone bill, or a statement from the Claimant's wife, that she did, indeed make the long distance phone call to the Roadmaster as alleged.

Moreover, Instruction 22.6.1 - ABSENCE FROM DUTY PROCEDURES provides that:

"If for some reason you need to be absent, it will be necessary that you personally contact your Assistant Roadmaster or Foreman to discuss the matter with him. Leaving a voice mail message for the Roadmaster will not be considered contacting the proper authority."

Therefore, even if, arguendo, the Claimant's wife did report his August 6, 1999 illness as alleged, that in and of itself is not sufficient notice, per Instruction 22.6.1 of the Agreement.

Finally, there is no dispute that eight days before the incident now in dispute, Roadmaster Goy told the Claimant that his attendance habits were becoming "unacceptable" and that he was expected to call-in ahead of time if he was going to be absent or tardy for work. Nevertheless, the Claimant completely disregarded those instructions and failed to contact the Roadmaster to tell him that he needed the day off on August 6, 1999.

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 13th day of November 2002.