

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster—Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on the Pennsylvania Railroad Company that:

Mr. L. W. Gump, Block Operator is being improperly disciplined by being held off duty and charged with being absent without leave. Claim is made for each day he is held off and prevented from working his regular assigned position.

OPINION OF BOARD: Claimant was dismissed from Carrier's service by notice dated September 21, 1953 after a hearing on the charge of being absent from duty without permission since August 4, 1953. His claim asks for reinstatement with back pay on the various grounds that he did not receive a fair trial in accordance with the Agreement, that the evidence at the hearing did not support the conclusion that he was guilty of the offense with which he was charged and that the discipline imposed, even if it is assumed that the trial was proper and the charges were proved, was arbitrary and excessive.

In brief, the facts show that Claimant's wife has suffered for years from hay fever in a very aggravated form. To preserve her health, it is necessary that she be removed to a northern climate during each hay fever season. It appears that in each of the years 1949 through 1952, Claimant applied for and received a leave of absence for the two months of the hay fever season in order to take his wife to Canada and stay with her there. On June 13, 1953, he requested a similar leave of absence beginning August 2, 1953. On June 18, 1953, he was advised by letter from the Division Superintendent that it was very improbable that he would be able to obtain such a leave because of the scarcity of extra operators and heavy work requirements; and that he would be advised if conditions should change for the better. He renewed his request some time later and was advised by letter of July 28, 1953 from the Division Operator that his request was denied. On Friday, July 31, 1953 he asked the assignment clerk whether there was any chance of his being let off and was advised that it was impossible. He told the clerk that he had to be off on Tuesday, August 4, in order to take his wife to the doctor, and was told that his position would be protected on that day. The clerk asked when he would be back and Claimant replied that he did not know when he was coming back.

Claimant proceeded to take his wife to Canada and to remain with her there. Carrier heard nothing from him from the time he left until September

16, 1953, on which date it received an acknowledgment from him of a notice of his hearing to be held on September 17, 1953 on the charge of being absent from duty without permission. On this notice, Claimant noted that he was unable to attend the hearing but that he authorized his son to represent him. The hearing was held on the seventeenth and resulted in his dismissal. On September 25, Claimant notified Carrier by message from Cadillac, Michigan that he would resume duty beginning Tuesday, September 29, and he reported for duty on that date. He was not allowed to work and upon returning to his home he found the notice of his dismissal.

We find no violation of the Agreement provision for a fair and impartial trial in the fact that the trial was conducted in the absence of Claimant. He was notified of the trial, and did not ask for postponement but affirmatively stated that he would be represented by his son. At the trial, both his son and a representative of the Telegraphers' Organization were present in his behalf. Neither do we find any evidence of unfairness or lack of impartiality in the conduct of the trial itself. Claimant asserts that his guilt was prejudged and bases his assertion largely on a statement by the Carrier official who conducted the hearing that the purpose of the trial was simply to determine discipline, that the fact had already been established that Claimant left his job without permission. Although this statement, standing alone, would indicate an improper conception of the purpose of the hearing on the part of Carrier's officer, we do not think that it amounted to conclusive evidence of unfairness in the light of the entire transcript of the proceeding. All of the elements of a fair trial were present. Claimant's representatives were given every opportunity to present his case and a full and complete record of all pertinent facts was made. We think that the evidence fully supports the conclusion that Claimant left his position without permission. His requests for a leave of absence were categorically denied on at least two occasions, and his final request was merely for one day off—August 4—in order to take his wife to the doctor. His statement that he did not know when he would be back, although it put Carrier on notice that he would probably be absent from his position, cannot be construed to have been a request for permission; nor can the fact that Carrier took steps to protect the position be considered as implying that it consented to Claimant's taking off beyond the single day of August 4.

The last question is whether Carrier's action in dismissing Claimant after finding him guilty of the charge against him was so severe as to be considered arbitrary in the light of all the surrounding circumstances. Certainly it is a serious offense for an employe to absent himself from his position for a period of two months after having been denied permission to do so and having been told that his services are badly needed during that period. Carrier has a right to expect that its employes will report to work as directed and will not leave without obtaining permission. Such an offense, particularly without extenuating circumstances, could certainly justify dismissal. In this case, there were extenuating circumstances. Claimant was subjected to severe pressures. He was in the difficult position of having to choose between what he conceived to be conduct which was required of him in order to safeguard his wife's health and conduct which was required of him in order to fulfill his obligations to his employer. Under such stress he decided that his duty to his wife was paramount, and acted accordingly. The question is to what extent these circumstances justify our modifying the discipline which Carrier has imposed.

Many employes undoubtedly have strong personal motivations which in their own minds fully justify their absenting themselves from work. Carrier, however, cannot maintain its operations if it is to be subject to each employe's personal needs insofar as reporting for duty is concerned. Carrier must insist that its employes report for work when called and must exercise its own discretion—in a fair and impartial manner—in deciding when a leave of absence can be granted. Another factor in this case which tends to support the imposition of more than a minor penalty against Claimant is the fact that it nowhere appears in the record that he made any effort to arrange for someone other than himself to stay with his wife so that he could return to

work after he had performed the vital duty of getting his wife away from Indiana to a pollen-free location.

We think that Claimant's conduct merited a substantial penalty; however, in view of all the circumstances which we have outlined above, we think that complete dismissal from the service is excessive. Claimant will have been sufficiently penalized for his offense if he is now reinstated to his position without loss of seniority but without reimbursement for any loss of earnings, and we so order.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated to the extent indicated in the Opinion.

AWARD

Claim disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 25th day of February, 1957.