

Award No. 16847
Docket No. TE-17020

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Pennsylvania Railroad, that:

1. Carrier arbitrarily and capriciously dismissed Printer Operator J. H. Spohn on October 14, 1965, for a minor offense, the charge being:

"Failure to report for your assignment, Printer Operator, Brick Office, Enola, Pa., 3 P. M. to 11 P. M. on Wednesday, September 22, 1965."

His failure to report and so notified Asst. Wire Chief at 3:55 P. M. was due to the breakdown of his automobile enroute to Brick Office to cover his assignment.

2. Carrier shall restore J. H. Spohn to service and compensate him for all time lost from October 14, 1965 and until restored to service.

OPINION OF BOARD: Organization contends that Carrier violated the Agreement by imposing the excessive discipline of dismissal against Claimant without proving him guilty of the charge of failure to report to work.

The issues to be resolved, therefore, are whether Carrier proved Claimant guilty of the charge of failure to report to work and if so was the discipline imposed excessive.

To sustain a conviction of failure to report to work, Carrier must prove that Claimant did not report to work and that his failure to do so was willful.

In the instant case, Claimant contends that his failure to report was not willful because it resulted from the mechanical failure of his automobile. The evidence indicates, however, that in spite of the mechanical failure of his automobile, Claimant could nevertheless have reported to work by either walking or selecting another means of transportation. Moreover, the evidence established that Carrier's suggestion that Claimant either walk or select another means of transportation was summarily rejected by the latter. Consequently, Claimant's actual failure to report coupled with his refusal to select and utilize other means of transporting himself to his position constituted a willful failure to report to work thus making him guilty as charged.

We proceed to determine then whether the discipline imposed, i.e., dismissal, was excessive.

When considered in the light of Claimant's previous record of having been disciplined six times for similar offenses we cannot say that the penalty imposed herein was arbitrarily, capriciously or unreasonably excessive.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1968.