

Award No. 18387

Docket No. SG-18699

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Melvin L. Rosenbloom, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

PEORIA AND PEKIN UNION RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Peoria and Pekin Union Railway Company:

Appeal on behalf of Assistant Signal Maintainer Wayne Lloyd of the seven calendar day suspension assessed against him effective January 17, 1969.

[Carrier's File: A-PR]

OPINION OF BOARD: On January 7, 1969, Claimant failed to report for work on his regular assignment and did not at any time on that day contact his supervisor concerning his absence. Claimant reported for work the next day but made no attempt to advise his supervisor of the reasons for his absence. Nor did he explain his absence on any of the ensuing days until January 13th when, during the investigation hearing, he stated that he was sick and had a fever on January 7th, that he had no telephone and lives a considerable distance from the nearest telephone, that the weather was foul on that day and he thought it unwise for him to leave his house to get to a telephone, and that there was no one at his home who could have informed his supervisor that he was ill and was to be absent. Claimant was assessed a suspension of seven days for not contacting his supervisor "... to apprise him of the circumstances ..." of Claimant's absence.

Claimant contests the discipline on two grounds: (1) there is no rule in the contract requiring employees to report for work or to advise when they are unable to report and, (2) Claimant had a valid excuse for his absence and his failure to notify his supervisor.

The first ground is both frivolous and cynical. The employment relationship and the contract itself are premised on the understanding that employees will perform the work for which they were employed. The bulletins which describe the duties of each job also set forth the days on which employees are expected to perform these duties. Indeed, in this case, the contract (Rule 11) specifies that bulletins must be established on the assumption that work described therein will require the services of the incumbents a minimum of five days per week. Additionally, the contract clearly spells

out on what days and under what circumstances employes shall be excused from reporting for work, demonstrating the unambiguous intent of the parties that, except where provided by contract, employes shall be expected to perform their duties on each day called for by the bulletins under which they work. It follows that if the Carrier has a right to rely on employes performing their duties on each day called for by their bulletins, the Carrier has a concomitant right to be notified when those duties will not be performed so that alternative measures can be taken if necessary to carry on the business of the Carrier.

As to the second ground on which the discipline herein is challenged, this Board recognizes that extenuating circumstances over which an employe may have no control may prevent an employe from performing his assigned duties and from notifying his supervisor of his inability to report for work. Appropriate cases have and may arise where discipline of an employe in such a situation would be unwarranted and unfair. The criterion for rejecting discipline in such cases is that the employe could not by the exercise of reasonable diligence fulfill his obligation to advise of his absence. The crucial test is whether the employe's failure to report resulted from his own neglect or from circumstances which rendered his reporting virtually impossible. The burden of establishing that the employe's failure to report did not result from his own neglect rests upon the employe once, as here, the Carrier has made a prima facie case by showing absence from work without notification. In recognition of the fact that frequently an employe may have available to him little more than his own word to meet this burden due to the non-existence of corroborative witnesses or other provable evidence, an employe should not ordinarily be held to impossible standards of proof. At the same time, when there is strong evidence to indicate that the employe did not exercise reasonable diligence to attempt to notify his supervisor of his absence from work the employe should be required to come forth with convincing proof to overcome that evidence.

In the instant case there is strong evidence that Claimant did not exercise reasonable diligence to notify his supervisor of his absence. That evidence is the Claimant's admission that he believed he was under no obligation to notify his supervisor. When asked during his investigation why he did not advise his supervisor of the reasons for his absence at any time after he returned to work, Claimant responded: "... if he wanted to know, he would have asked me ...". It is reasonable to assume that if Claimant thought he was not required to make any effort to inform his supervisor of the reasons for his absence after he returned to work, he likewise considered it unnecessary to make such an effort while he was absent and actually made no such effort. In view of Claimant's admitted non recognition and non-observance of his duty to account for his absence and his failure to present convincing evidence of any valid reason for his failure to notify his supervisor, we shall deny the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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 29th day of January 1971.