

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20266
Docket Number CL-20307

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station Employees
((formerly Transportation-Communication
(Division, BRAC)
(
(The Long Island Rail Road Company

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Long Island Railroad, GL-7388, that:

1. Carrier violated the Agreement between the parties because it dismissed Block Operator, Robert C. Farley without just cause on July 25, 1972.

2. Carrier shall now reinstate Claimant, Robert C. Farley, to service with seniority, vacation and other rights unimpaired.

OPINION OF BOARD: On July 4, 1972, Claimant was regularly assigned as Block Operator from 3:00 p.m. to 11:00 p.m. At approximately 6:45 p.m. he left the property. He returned one hour later and found two Railroad Patrolmen and a Trainman in the tower. When asked what they were doing there, Claimant was advised that he had "missed a train." Claimant checked, and found that the statement was true. After a brief discussion, Claimant again left the property.

Claimant was charged with a violation of Rule E, which, among other things, prohibits an employee from absenting himself from duty. After a trial on the charge, Claimant was dismissed from service.

Claimant admits that his actions of July 4, 1972 were improper, but states that they were caused by extenuating circumstances. He states that he had certain personal marital problems at the time and as a result, without permission, left the tower to make a phone call to his wife. A nearby phone booth was in use, so he drove approximately five (5) minutes to the next available phone booth. Claimant states he felt he had an hour of time available, but concedes that he misread a new timetable which demonstrated that he only had a few minutes.

When Claimant returned to the tower approximately one hour later and was confronted by the Patrolmen, Claimant states that they were laughing and he was "rubbed the wrong way" by their nonchalant

attitude. He became mad and drove away from the premises. After a short drive, he felt that his actions were not too serious, and considered returning to the tower, but felt that it was too late.

Claimant conceded, at the trial, that "...I know I was wrong with my actions, there is no way of condoning what I did."

The Organization does not seek to pardon Claimant's action, but urges that the punishment of dismissal was too severe under all of the circumstances.

The Carrier considered Claimant's past record when assessing the penalty, i.e., a 15 day suspension for insubordination and a 30 day suspension for possession and use of intoxicants while on duty.

At the Hearing before this Board, the Organization stated that the Discipline Record attached to Carrier's Ex Parte Submission is someone's record, but it is not identified as Claimant's.

On November 16, 1972, Carrier advised the Organization that Claimant's past record was being considered. Notice of intention to file Ex Parte Submission to this Board was submitted on June 19, 1973. At no time during that time period did Claimant raise any issue concerning the prior record. Carrier attached to its Ex Parte Submission, as Exhibit 8, two pages. One clearly identifies itself as the service record of Claimant. The second page of Exhibit 8 is a discipline record, but it contains no further identification. It is noted that the Employees' Reply to Carrier's Ex Parte Submission fails to question that Page 2 of Exhibit 8 is, in fact, Claimant's record. Under the facts and circumstances of this record, we are inclined to believe that Page 2 of Exhibit 8 is, in fact, Claimant's disciplinary record. However, in an effort to consider the record in the most favorable light to Claimant, we will disregard it from our consideration.

We feel that Claimant's actions of July 4, 1972 are sufficient in and of themselves, to warrant Carrier's action.

The Organization has submitted a number of Awards for our consideration, dealing with severity of punishment. We have reviewed those Awards in detail and note that, by and large, discharges were reduced to lesser punishments based upon compelling mitigating circumstances, or determinations that the offenses were relatively minor in nature. We find no such factors here. Even assuming that Claimant was undergoing severe marital problems and was emotionally distraught

(and the testimony at the trial does not fully support that conclusion), he made four (4) independent, willful and deliberate determinations on July 4, 1972 which demonstrated a disregard for his employment relationship and his obligation to the Carrier.

Initially, he decided to leave the tower, without permission to "go downstairs" to make a personal call. This act was in violation of Rule E.

Secondly, when he found the nearby telephone in use, he compounded his violation by driving away from the tower to find another phone.

Thirdly, when he returned to the tower, he became upset at the Patrolmen's attitude and deserted his position a second time.

Finally, after departing the tower the second time, he realized that he should return, but concluded that he would not.

The four decisions stated above do not, of course, take into account his misreading the timetable or the length of his initial absence.

Upon the entire record, this Board is of the view that Claimant, on July 4, 1972, allowed his own personal situation to totally erase his obligation to Carrier. Each time he had an opportunity to mitigate his initial desertion of duty, he opted, rather, to compound it.

We find no basis for disturbing the Carrier's action.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1974.