

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20831

Docket Number SG-20806

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company:

(a) On or about January 22, 1973, the Carrier violated the current Signalmen's Agreement, particularly Rules 16(a), 67 and revised Rule 60, when it disciplined Mr. John D. Foote thirty (30) days deferred suspension, when he did not repair the malfunction of the Lake Bluff interlocking plant, account of being registered unavailable for calls as Rule 16(a) allows.

(b) The Carrier now be required to clear Mr. John D. Foote's record of this discipline. [Carrier File: D-9-8-149]

OPINION OF BOARD: Claimant was charged with failure to comply with instructions to perform certain repairs. Subsequent to investigation, a thirty (30) day deferred suspension was assessed.

On January 12, 1973, Claimant registered absent or "checked out" pursuant to Rule 16(a):

"SUBJECT TO CALL 16. (a) Employees assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railway, and will notify the person designated by the management where they may be called. When such employees desire to leave their home station or section they will notify the person designated by the management that they will be absent, about when they will return, and, when possible, where they may be found. Unless registered absent, regular assignee will be called."

At the instruction of the Dispatcher, at about 6:27 p.m. on the day in question the Telegraph Operator attempted to contact Claimant (at home) by telephone, however the line was busy. At 6:31, Claimant answered his phone, and the Telegraph Operator told him that there was certain trouble requiring his attention. According to the operator, Claimant responded that he had "checked out."

The operator attempted to contact other employees, both before and after the time he spoke with Claimant, to no avail (except for one employee who lacked the necessary experience). This information was relayed to the Dispatcher, who advised the operator to keep trying, and to contact the employees who had "checked out." The only employee he was able to reach was Claimant (at 7:24 p.m.). When Claimant was told of the Dispatcher's instructions, he responded (according to the operator), "Sorry, buddy, I am leaving town."

At the investigation, Claimant denied that he mentioned that he was leaving town, but rather, testified that when the operator told him that the Dispatcher said, "You gotta go" - he answered: "That I didn't gotta go."

Although not mentioned on January 12, 1973, Claimant stated at the investigation that his refusal was predicated upon the fact that he was an official of the Union and was "checked out" to go to a Union meeting. There was also reference to the fact that Claimant's father was seriously ill in the hospital at the time.

The Organization takes the position that, "registering off call should also relieve the employee of his responsibility to respond...."

We question that the wording of Rule 16(a) grants an employee an unfettered right to be absent from duty merely by having "checked out." Such a contention was, in general terms, advanced and rejected in Award 10846. Moreover, Claimant conceded, at the investigation, that part of his responsibilities as a Signal Maintainer is to answer emergency calls. In addition - although there was some question as to the clarity of the document - Claimant read and signed Circular Letter No. 256 five (5) months before the incident which stated, in part, "Simply registering 'unavailable' or 'checking out' is insufficient information and not in accordance with existing rules, instructions, or schedule agreement."

Although considerable mention has been made of the state of Claimant's father's health, he never stated that said factor entered into his refusal to respond to the instruction. In its Rebuttal Statement, the Organization states that Claimant "...might have wished to visit his father in the hospital, and attend the Union meeting, during the same evening." The cited assertion is purely speculative and is not based upon any evidence of record.

Had Claimant (as an elected official) stated his refusal to report in terms of necessity of attendance at a Union meeting, we would be required to consider an asserted insubordination in light of the compulsion of the basis for the refusal. But, the record before us is not in such a posture, and we state no opinion as to an ultimate conclusion under those circumstances. Suffice it to say

that we are limited to the particular record before us, and Claimant made no such assertion on January 12, 1973. Rather, he conceded at the investigation:

"Q. Then what was your reason for not going?

A. Well, as I said before, I was registered out."

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

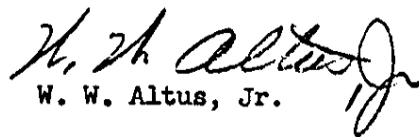
Dated at Chicago, Illinois, this 30th day of September 1975.

DISSENT TO AWARD NO. 20831 - DOCKET NO. SG-20806

The Majority in Award No. 20831 has erred in denying the employees' claim.

Its first error was to look to Award No. 10846 which was based on an agreement rule contrastible to that here present. It also erred in relying on the failure of the Claimant to advise his caller of the precise reasons for his unavailability; the record shows that the Carrier was apprised of his reasons not later than at the investigation, before discipline had been imposed, and in ample time to have given it due consideration. Finally, we cannot imagine a carrier management so inattentive to its affairs that it would not know who are the officers of its employees' organizations and not knowing the schedule of such organizations' meetings.

Award No. 20831 is in error and I dissent.


W. W. Altus, Jr.

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