

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20876
Docket Number MW-20812

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Alton and Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The suspension of thirty days imposed upon Trackmen William McHatten, Alvin Wren and Emmett Dinwiddie was without just and sufficient cause and on the basis of unproven charges (System File K-1638-27).

(2) The charges against the above-named employees be stricken from the record and payment be allowed to each of said employees for the monetary loss each sustained, all in accordance with Rule 20A(d) of the agreement.

OPINION OF BOARD: Claimants were charged with "leaving your assignment without authority about 12 Noon, Tuesday, September 19, 1972." Subsequent to investigation, each Claimant was assessed a thirty (30) day suspension.

Claimants have urged certain procedural deficiencies in the handling of this dispute. However, we are unable to find that those matters were raised for consideration on the property. They may not be raised here under that circumstance.

It is conceded that none of the employees worked after noon on the day in question, and the issue to be resolved is whether or not they reasonably believed that they had the permission of the Foreman to be absent. The Organization argues that the record clearly shows that the Foreman was well aware of the stated intention of each Claimant to depart the premises - for good and sufficient cause - and, at the very least, he tacitly acquiesced.

Carrier has cited numerous Awards in support of its contention that this Board is not constituted to make determinations of credibility. Under the authority of those Awards, we are required to accept the resolutions of credibility questions as made on the property, and accordingly, we must conclude that the Foreman did not give specific permission to the employees to be absent on the afternoon in question.

However, that determination does not resolve the dispute. It appears, from a review of the Transcript of Investigation, that Carrier did not require as formalized a granting of permission as was its right. For example, at Page

7 of the Transcript of Investigation, we note the employees "...could have come up to me and told me anything but they just left - one told me at 10:15 and he was sick and I said try to make it until 10:30."

When asked if it was part of his job to find out why a man goes home, the Foreman replied:

"Some lay off on pay day and some say it none of my business."

Further, we have noted that a witness called by the Carrier stated, when asked what the Foreman's general reply is when he is told that a person is going home:

"He say OK. with a wave of the hand."

Surely, McHatten appeared to be suffering severely from the inordinate heat of the day, and the Foreman's testimony indicates that it was completely out of character for McHatten - categorized as a good worker and dependable - to merely walk off of a job. From an entire review of the record, the Board detects, as noted above, a very loose procedure concerning employees departing their work station.

While it appears that the Foreman had advised his crew at about ten (10) minutes before noon that the gang might have to do certain additional work that could require them to "run late", he apparently did not make any inquiry of the Claimants (ten (10) minutes later) when they said they were departing; nor did he inquire as to the reason for their leaving the job. His testimony in this regard, "No, I couldn't hold them" is susceptible to a number of interpretations.

While this Board does not condone employees departing their duty assignment without permission, at the same time, we must consider the entire record as it relates to whether or not they had reason to believe that their departure was permissible under the circumstances. In this regard, we question that the Foreman did not add to the situation by his inaction. Accordingly, under this record, we feel that a ten (10) day suspension was sufficient. Claimants shall be reimbursed for compensation lost beyond the period of the ten (10) day suspension.

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;

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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 violated.

A W A R D

Claim sustained to the extent stated in the Opinion of the Board, above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November 1975.