

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21004
Docket Number MW-21151

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(St. Louis Southwestern Railway Company

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

(1) The Carrier violated the Agreement when it dismissed Track Laborer Clearance Bonds, Jr. on July 17, 1974 (System File S-74-95/PR-88077).

(2) Mr. Clearance Bonds, Jr. be allowed pay for all time lost, including vacation pay, from July 17, 1974 to date of reinstatement with seniority and all other rights unimpaired.

OPINION OF BOARD: Claimant was dismissed for allegedly being absent from duty on July 16 and 17, 1974, without proper authority.

Claimant asserts that he was ill on the 16th, as a result of working in extreme heat on the preceding day. Further he testified that on July 16 he requested track laborer, Frazier - an employe with whom he customarily rode to work - to advise the foreman as to the reason for the absence, and he called in at 10:00 A.M. and requested that a message (to the same effect) be left for the foreman. He asserted that he did not have the Foreman's telephone number. Claimant insists that he was present for duty on July 17, but was not allowed to work.

Carrier states that Claimant had been previously warned of the consequences of continued unauthorized absenteeism. Regardless of that, he was absent the entire day of July 16 and reported 30 minutes late on the 17th. The Foreman insists that Claimant did not contact him concerning the 16th or the 17th; nor did he explain his absence and tardiness on the 17th.

Claimant testified that the Foreman never read Rules M 810 and M 811 to the gang, but the foreman stated that they had been read and discussed several times:

"M810. Employes must report for duty at the prescribed time and place, remain at their post of duty and devote themselves exclusively to their duties during their tour of duty and reside wherever required. They must not absent themselves from their employment without proper authority. They must not engage in other business without permission of the proper officer.

"Employees must not sleep while on duty. Lying down or assuming a reclining position, with eyes closed, or eyes covered or concealed, will be considered sleeping.

"M811. Employees must not absent themselves from their places, substitute others, or exchange duties without proper authority."

Claimant states that the reason he offered no explanation, on the 17th, for his prior absence was because the foreman "...didn't give me time. I was handed my dismissal slip and he walked away." He insists however that he and Frazier met the crew truck at the depot at shift starting time.

Claimant did not call Frazier as a witness at the August 1, 1974 hearing, nor did he present evidence from a D.D. at that time, although he submitted a September 30, 1974 Statement from D.D. to Carrier in January of 1975; which purported to confirm his testimony that he called the depot - for some reason - on July 16.

It has long been held that this Board is not constituted to weigh questions of credibility and to substitute its own judgment, unless, of course, there is no basis for such a finding. Here, there is an adequate basis for upholding the credibility determination. Without commenting upon the so called "sole witness" concept, we do not find that said matter is properly before us. Even were we to credit fully Claimant's testimony, we feel it is quite damaging. When an employe, who has previously been warned about absenteeism, trusts his responsibility of notification to a fellow employe, and then fails to call in until 2½ hours after shift starting time, he clearly acts at his own peril.

There is substantive evidence of record, including Claimant's own testimony, to support Carrier's finding of guilt.

In any event, the Employees argue that the discipline of dismissal was exceedingly harsh under the prevailing circumstances. Each such assertion must be viewed within the context of the record under review. This Employee demonstrated, in our view, a rather calloused disregard for his employment status. When we add to that the fact that there had been prior discussions concerning absenteeism - and a written warning that further violation of Rules M 810 and M 811 would result in dismissal - we are inclined to feel that the termination was not inappropriate in this case.

The claim seeks compensation for vacation pay due. Article IV, Section 2 of the August 19, 1960 National Agreement supports that request.

Carrier states that payment for 1974 vacation has been forwarded and received. Moreover, Carrier concedes that Claimant is entitled to ten (10) days of vacation for 1975, but the record does not show that said amount has been paid. We will sustain only that portion of the claim which demands payments for vacation pay. The remainder of the claim is denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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

Only so much of the claim that deals with vacation pay is sustained, as noted in the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 12th day of March 1976.