

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21563
Docket Number MW-21687

Robert W. Smedley, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Louisville & Nashville Railroad Company

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

(1) The dismissal of Track Repairman Paul S. Sizemore was without just and sufficient cause and on the basis of unproven and disproven charges (System File D-105846; E-306-12/1-16 (51)).

(2) The claimant's record shall be cleared of the charge; he shall be reinstated to service and paid for any time lost - all in conformance with the provisions of the first paragraph of Agreement Rule 27 (f).

OPINION OF BOARD: Claimant was dismissed for leaving work without permission at 10:00 a.m. on Sunday, January 12, 1975. The regular work days were Wednesday through Sunday, 7:00 a.m. to 3:30 p.m. Claimant was 19 years old and had been employed by carrier as track repairman for some four months.

The proof is equivocal as to the circumstances of Claimant's departure. In response to a leading question, the foreman testified at the hearing that he did not give Claimant permission to leave. Part of the foreman's testimony is as follows:

"Q. Give us what information you can concerning these facts?

A. He left around 10 o'clock A.M. because of bad weather, cold and rainy.

Q. Did you give Mr. Sizemore permission to leave work at 10 A.M., Jan. 12, 1975?

A. No sir.

Q. Has Mr. Sizemore ever requested you to furnish him without a copy of the agreement between the M. of W. Workers and the L&N?

A. I can't remember.

Q. Did you ever inform Mr. Sizemore that he had the privilege, being a track repairman, of knocking himself off at any time he decided that the weather was not suitable to work in?

A. No, they went to a union meeting, four men, they brought the news back to me that in inclement weather that it was up to the foreman whether they knocked off or not and I told them that I could not knock anyone off, that they would have to knock themselves off."

The foregoing is not convincing that Claimant was either ordered not to leave or was refused permission to leave.

Evidence is that it was very cold and rainy that day and that two other members of the crew had been allowed to leave at 9:15 a.m. Claimant says he had a cold and sore throat and when he asked to leave because he was afraid he would "catch the flu" he was told by the foreman that "if he (i.e. the foreman) was a laborer he would knock himself off and go home" and "in the agreement book it says that a laborer can knock himself off because of inclement weather." Claimant understood he would not be paid for the rest of the day.

About one week prior, Claimant had been warned about leaving work. He belatedly brought a doctor's statement dated January 16, 1975, that he had the flu on January 12. A written instruction prohibits employees from "absenting themselves from duty - - - without proper authority." Of course, it could not be the case that any employee was allowed to "knock himself off" just because of bad weather. But the proof, in whole, is ambiguous as to how much Claimant knew, or should have known, about the rules, and what he was actually told by the foreman.

Proof of the charge being slight and not substantial, we cannot uphold the discharge. But we find no good reason to grant further relief. Claimant shall be reinstated, with seniority and other rights unimpaired, but without any compensation or benefit for the time off work.

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 violated.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1977.