

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22085
Docket Number CL-21845

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
(GL-8288) that:

1. The Carrier violated the Rules Agreement effective May 1, 1955, as amended July 15, 1967, particularly the disciplinary rules when it imposed discipline of dismissal from the service upon Mr. John Arnold Collett, Junior Console Operator, Omaha, Nebraska, Union Pacific Headquarters Building, Management Information Service Roster No. 21, on April 22, 1975.

2. Carrier shall compensate Mr. John Arnold Collett one (1) day's vacation pay for April 1, 1975; further, that he be compensated for eight (8) hours' pay each work day commencing April 2, 1975 until restored to service on September 2, 1975 and for all overtime he would have worked during that period.

3. Carrier shall pay him ten (10) percent interest on any and all monies that he was deprived of during his improper dismissal from the service.

4. Carrier shall include any wage increases placed in effect and any change in fringe benefits during the period of dismissal which Claimant would otherwise have been entitled.

5. Claimant's record shall be cleared of any disciplinary action taken as a result of the arbitrary, unfair, illegal, partial, biased, discriminatory and grossly unjust hearing held on April 8, 1975.

OPINION OF BOARD: This dispute stems from Carrier's dismissal of Claimant following an investigation held on April 8, 1975. Claimant appeared at the investigation under charge of being absent without proper authority on April 1, 1975.

After carefully reviewing the record, we find that Claimant was afforded a fair and impartial hearing and that, except as herein-after noted, the case was free from procedural defect. Accordingly, we turn to the merits.

In essence, Claimant was brought to trial and discharged from service - later changed to a five-month disciplinary suspension (the first actual discipline assessed Claimant during his railroad career). This disciplinary action was for absenting himself from his assignment and for failing to follow the proper procedure to request a vacation day, as set forth in Carrier's rules. Claimant contends that he had placed on the desk of his supervisor a written request to take one day's vacation on April 1, 1975, and thus he was excused from work.

We find sufficient evidence in the record to establish that Claimant had not discussed with, or received permission from, his superiors to take April 1 as a vacation day.

Further, we find that Claimant did not follow established procedures to request vacation time and that merely placing a vacation request on a supervisor's desk does not rise to the level of receiving approval for a vacation. Under these circumstances some discipline was warranted.

We conclude, however, that a five-month actual suspension was grossly excessive when weighed against the offense. Moreover, Claimant had never before been assessed discipline. We have often held that the purpose of discipline is to teach and not to penalize. Ten days is an appropriate disciplinary suspension under the circumstances, and we accordingly reduce the discipline to a ten-day suspension.

Carrier argues that Rule 45(a) of the agreement permitted it to withhold Claimant from service pending the conclusion of the investigation. The rule reads:

"(a) No employee will be disciplined or dismissed without a fair hearing by his supervising officer. Suspension in proper cases pending a hearing, which will be held within seven (7) days of the time charge is made or employee suspended, will not be considered a violation of this principle. At a reasonable time prior to the hearing the employee will be apprised of the precise charge against him; in case of unsatisfactory service or incompetency all charges to be investigated will be stated. The employee will have reasonable opportunity to secure the presence of witnesses and the right to be represented by the duly accredited representatives as defined in Rule 57.

"Investigations and hearings shall be held when possible at home terminal of the employee involved and at such time as not to cause the employee to lose time." (Emphasis added)

Our review of the record leads us to find that this was not a case properly justifying the withholding of an employee from service pending hearing.

Accordingly, we also find that Claimant shall not be compensated for April 1, the day he sought to take as a vacation day. Claimant did not have permission to be absent on this day.

Claimant shall be compensated for all wages lost between April 2, 1975 (the date he was improperly withheld from service) to and including April 22, 1975 (the date he was discharged from service) account being improperly withheld from service. Claimant shall also be compensated in accordance with the second paragraph of Rule 45(a) for wage loss incurred subsequent to May 2, 1975, when his ten-day suspension was concluded. The interest claimed in part 3 of the Statement of 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

Claim sustained to the extent and in the amount set forth in 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 1978.