

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22320
Docket Number MW-22295

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(New Orleans Public Belt Railroad

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

(1) The dismissal of Bridgeman-Helper C. T. Ball 'as a result of unauthorized absence and failure to notify employer for absence November 30, 1976, after being granted a leave of absence for November 24th, 26th and 29th, 1976' was excessively harsh and disproportionate to the offense with which charged (System File 013.7).

(2) Claimant C. T. Ball shall be reinstated to his former position with all seniority, vacation and any other rights unimpaired."

OPINION OF BOARD: Claimant in this case was employed as a Bridgeman-Helper for the New Orleans Public Belt Railroad (NOPB), a switching and terminal railroad operating in the New Orleans Metropolitan Area. On or about November 22, 1976, he requested and was granted a leave of absence for November 24, 26, and 29, 1976, for the purpose of visiting relatives in Southern Florida. While enroute back to New Orleans, November 29, 1976, Claimant says he encountered inclement weather and remained at the house of a friend's mother overnight. As a result, Mr. Ball did not report to work on Tuesday, November 30, 1976. When Claimant did report to work on Wednesday, December 1, 1976, he was sent home by his Superior and advised that he would be dismissed. On December 2, 1976, Mr. D. D. Childress, Manager, Engineering and Maintenance wrote Claimant advising him that he was dismissed from the NOPB effective Wednesday, December 1, 1976, at 8:00 a.m. "as a result of unauthorized absence and failure to notify employer for absence November 30, 1976, after being granted a leave of absence for November 24th, 26th and 29th, 1976."

The Organization alleges that the inclement weather prohibited Claimant's driving back to New Orleans on the night of November 29, 1976. They argue that conditions "impelled a safe and prudent driver to dispense with any further driving until the weather cleared up,"

and that therefore Claimant's absence on Monday, November 30, 1976, should be excused. The Organization further maintains that even if, arguendo, Claimant's absence does constitute an unexcused absence, the penalty of dismissal is excessively harsh.

Carrier, citing Rule 10 of the contractual Agreement, argues that Claimant failed, without sufficient cause, to report to work or to request an extension following the expiration of his leave of absence. As to the severity of the discipline, Carrier states that Claimant was reinstated on a leniency basis on September 16, 1976, with the understanding that he would thenceforth conform to attendance regulations. Carrier also notes that during the two months between Claimant's reinstatement and his dismissal he was absent from work ten (10) days in addition to the leave of absence.

Based upon the record before us there is no question that Claimant was absent from work without leave on November 30, 1976. Claimant's testimony at his hearing not only does not refute this fact, but rather confirms it. We do not find the cost of a long distance phone call to be sufficient grounds for excusing Claimant's failure to report his anticipated absence to his supervisor. Upon review of the record and in particular Claimant's past employment record, we do not find Carrier's dismissal of Claimant to be excessively severe discipline. In light of Claimant's reinstatement with leniency on September 16, 1976, conditioned upon his improving attendance and Claimant's subsequent 10 days' absence between September 16, 1976 and his leave of absence, we find Claimant had ample opportunity to modify his behavior and failed to do so. He apparently is unable or unwilling to abide by reasonable rules of attendance at work. The claim shall be 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 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 28th day of February 1979.