

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Aware Number 22395  
Docket Number CL-22404

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
Steamship Clerks, Freight Handlers,  
Express and Station Employees  
(Illinois Central Gulf Railroad

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8521) that:

(a) Carrier violated the Agreement when it wrongfully suspended Relief Agent F. W. Morrical, from the service of Carrier for failure to comply with Operating Department Rules "A", "B" and "H".

(b) Carrier now be required to clear record of Relief Agent F. W. Morrical of all charges, with pay for all time lost due to five (5) days suspension from the service of Carrier commencing November 8, 1976 through November 12, 1976.

(c) Carrier now be required to pay Relief Agent F. W. Morrical for attending investigation on November 2, 1976.

OPINION OF BOARD: On October 29, 1976, Claimant was advised to attend a formal investigation concerning an alleged "...desertion from your assignment...at approximately 4:00 p.m., Wednesday, October 27, 1976..."

Subsequent to the investigation, Claimant was found guilty of violating Operating Department Rules "A", "B" and "H" and was suspended from service for five (5) days.

Claimant was assigned to the 7:00 a.m. to 4:00 p.m. shift on the day in question, and he did not leave the office until 4:00 p.m. Rule 32 states:

"No overtime hours will be paid for unless worked by direction of proper authority except in cases of emergency where advance authority is not obtainable."

Claimant asserts that he was neither instructed nor authorized to work overtime on the day in question, as provided in the cited rule. Therein lies the basis for this dispute because the Carrier is of a contrary view.

Accordingly, it becomes necessary for us to determine if there is anything of record which would warrant our disturbing the credibility resolution in this case.

On the day in question, the Claimant did not complete certain billing, and when he was preparing to leave at the end of his shift, the Assistant Trainmaster said:

"Where are you going, you have to bill the grain train."

But, Claimant asserts that the Trainmaster did not say "...when I had to bill it."

Carrier asserts that the Employee had a responsibility to complete the duties connected with his assignment and if it required overtime, he should have requested permission to work the necessary overtime. The Assistant Trainmaster confirms that he told the Employee, at 4:00 p.m., "...You know you have to bill the grain train..." but the Claimant left. It is conceded that no one specifically instructed the Employee to work overtime.

We find no basis to upset the discipline because the Hearing Officer considered certain operating rules when, in fact, they related - at least in part to the specific charge. A finding that the Employee violated Rule "H" - which prohibits desertion from duty - is permissible when the Employee is charged with "desertion."

The term "desertion" may very well convey different concepts to different individuals. Certainly, this Employee did not depart the premises during a work shift; but we feel that the term is broader than that and it prohibits this type of activity. We will grant that the Employee needed authority to work overtime, but a fair reading of the record suggests that this Employee had a reasonable basis to believe that some conduct was expected of him. When an Assistant Trainmaster said "...where are you going, you have to bill the grain train..." it was, at that point, obvious that some particular activity was expected and a loyalty to the employer required the Claimant, at the very least, to ask what the Supervisor meant by that rather pointed statement.

The fact that he was not specifically instructed to work overtime is explained by the testimony that it was presumed that he was going to the Post Office and that he would return to complete the task.

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 27th day of April 1979.