

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22649
Docket Number CL-22459

George S. Roukis, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Bessemer and Lake Erie Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8519) that:

1. The Carrier violated the effective Clerks' Agreement when it improperly and without just cause charged Clerk J. L. Straub with being "absent without permission on Monday, July 19, 1976" and arbitrarily and capriciously suspended him from service for two (2) calendar days.

2. Carrier shall now be required to compensate Clerk J. L. Straub for eight (8) hours' pay at the pro rata rate of his assigned position for September 1 and 2, 1976, respectively, and clear his record of the charge.

OPINION OF BOARD: Claimant was charged with being absent without permission on July 19, 1976. An investigative hearing was held on August 9, 1976 pursuant to Agreement Rule 44 at which time, claimant was found guilty of the specification and suspended from service for two (2) days.

This disposition was appealed and progressed on the property on both procedural and substantive grounds and is presently before us for adjudicative review.

In considering the numerous procedural objections raised by claimant, we find no concrete or strongly suggestive evidence that the hearing was improperly conducted or that the hearing officer judicially acted in a prejudicial manner.

Claimant was provided an investigation that comported with the essentials of administrative due process and, in fact, claimant at the end of the hearing stated that it was a fair and reasonable proceeding.

We do find, however, after careful review of the record, that claimant visibly failed to notify his supervisor in timely and appropriate fashion that he would be absent that day in contravention of the rules governing absence notification. The record shows that he called his supervisor more than four (4) hours after his assigned work began without proffering any justifiable reason for the inordinate delay. To be sure, he did call his supervisor as would be normally required but it was too late and well beyond the permissible bounds of timely notification. Close reading of the investigative transcript, specifically the testimony depicting claimant's telephone conversation with his superior does not reveal that he was seriously ill or confronted with an unforeseen problem. He was obligated to call his superior about four (4) hours sooner rather than at 12:30 P.M. and he didn't observe this fundamental requirement. It is an axiomatic, almost invariant principle in the railroad industry that inexcusable lateness or absence is a serious offense. All Divisions of the National Railroad Adjustment Board have uniformly subscribed to its relevance and logic. In Third Division Award 18387, we held in pertinent part that "It follows that if the Carrier has a right to rely on employees performing their duties on each day called for by their bulletin, the Carrier has a concomitant right to be notified so that alternative measures can be taken if necessary to carry on the business of the Carrier." (See also Third Division Awards 7477, 8424, 20239 and 15167.)

We believe this holding applies foursquare with the facts herein. Claimant was mindful of the procedures regarding absent notification and he didn't comply with them. The two (2) day suspension is not unreasonable, when the significance of this offense is studiously considered. We will deny the claim.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1979.