

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23039  
Docket Number MW-23169

A. Robert Lowry, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(St. Louis Southwestern Railway Company

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

(1) The dismissal of Laborer Albert Morehead for alleged absence 'from duty on December 8, 1978, without authority', was without just and sufficient cause and arbitrarily and capriciously imposed (System File MW-79-6-CB).

(2) Laborer Albert Morehead shall be reinstated to his former position, with pay for time lost and with vacation, seniority and all other rights unimpaired."

OPINION OF BOARD: Mr. Albert Morehead, the claimant, was employed by the Carrier on October 4, 1976 as a laborer. On December 11, 1978, the Carrier addressed a letter to claimant dismissing him from service account being absent from duty Friday December 8, 1978, without authority as required by Rule 810 of Carrier's Rules and Regulations for the government of Maintenance of Way and Engineering Department employees. In accordance with the rules of the Agreement between the parties, claimant requested and was granted a hearing on the charges on December 27, 1978. A copy of the transcript of the hearing was made a part of the record. On January 2, 1979, in a letter to claimant Carrier sustained its earlier decision of dismissal.

The record is clear that claimant was absent from his employment on Friday December 8, 1978 without authority. However, the record shows claimant called Foreman Smith's home between 5:30 and 6:00 AM on that morning and was informed by Smith's mother that he was in bed asleep. Foreman Smith confirmed the telephone call but stated his mother did not understand what he wanted. Smith also testified that he left home after the call had been made to his mother.

Carrier's Rule 810 reads as follows:

"Employees must report for duty at the prescribed time and place, remain at their post of duty, and devote themselves exclusively to their duties during their tour of duty. They must not absent themselves from their employment without proper authority. They must not engage in other business which interferes with their performance of service with the Company unless advance written permission is obtained from the proper officer.

"Continued failure by employees to protect their employment shall be sufficient cause for dismissal.

"An employee subject to call for duty must not leave his usual calling place without notice to those required to call him.

"Employees must not sleep while on duty. Lying down or assuming a reclining position, with eyes closed or concealed, will be considered sleeping."

While the rule clearly requires an employee to obtain authority prior to being absent, it also obligates his supervisor to be available to receive such requests. Foreman Smith testified that his mother knew it was claimant Morehead who called and she should have been advised by her son that such calls, even at 5:30 in the morning should be given to him. Claimant can not be held responsible for this failure on the part of the foreman.

The record shows claimant has a history of absenteeism. In his two years of employment he was absent without authority on the following occasions; he was absent on February 17 and March 17, 1977 and was counseled for violation of Rule 810, on May 3, 1977 he was suspended for being absent on April 29 and May 2nd, he was reinstated on a leniency basis on May 23, 1977. Two months prior to this incident he was also suspended for five days for the same offense.

The Board, in view of the circumstance prevailing here, awards reinstatement of claimant with seniority and all other rights unimpaired. However, his past record calls for the "without back pay" penalty. This award should be made a part of claimant's personal record.

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

Award Number 23039  
Docket Number MW-23169

Page 3

That the discipline imposed was excessive.

A W A R D

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A.W. Paulke  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1980.