

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23121  
Docket Number MW-23202

A. Robert Lowry, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Consolidated Rail Corporation

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

(1) The dismissal of James T. Parham for alleged absenteeism was without just and sufficient cause (System Docket LV-115).

(2) James T. Parham shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The Claimant, Mr. J. T. Parham, was employed by the Lehigh Valley Railroad, now part of the Consolidated Rail Corporation, as a trackman. On April 20, 24, 25, May 2, 3, 4, 8, 9, 10, 11 and 15, 1978, while assigned to Rail Gang No. 120, was absent without permission. On May 15, 1978, Carrier notified Claimant by letter that he was absent on the above listed dates without authority and, therefore, was in violation of the Agreement between the Trustees of the Consolidated Rail Corporation and the Brotherhood of Maintenance of Way Employees. The Carrier received no response to its letter. On June 20, 1978, Carrier notified Claimant by certified mail to attend a hearing and investigation on July 6, 1978:

"..... to determine your responsibility, if any, in connection with your failure to comply with the provisions of Rule 801 of the former Lehigh Valley Railroad Company Book of Rules."

Claimant ignored the notice and did not appear at the hearing and investigation on July 6, 1978, which was held in absentia with Claimant's duly accredited representative present. Copy of the transcript of the hearing was made a part of the record. A careful reading of the transcript indicates the hearing to have been fair and impartial, none of Claimant's rights were violated.

The applicable paragraph of Rule 801 reads as follows:

"801. Employees must not be absent from duty without permission, nor exchange duties or substitute other employees in their places without proper authority."

The record clearly shows Claimant was absent from his assigned duties on the dates indicated without permission in violation of the quoted rule.

Subsequent to the hearing, Claimant contended he was ill on the days in question and provided a statement from his doctor dated July 28, 1978, indicating that he had seen the Claimant on May 27, 1978, with Hay Fever Allergy, and stated he was able to return to work on June 1, 1978.

Claimant had ample opportunity to inform his supervisor of his condition prior to the hearing and investigation. The Board rejects his late plea of illness, and, we, therefore, must decline 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.

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 15th day of January 1981.

