

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23135
Docket Number MS-23158

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Edgar L. Sherard, Jr.
(
(The National Railroad Passenger Corporation

STATEMENT OF CLAIM: "As the result of an investigation on August 1, 1978 under the charge: Employee shall not . . . be absent from duty . . . without proper authority in that you have been absent without permission from your position as Food Specialist, Chicago On Board Service Extra Board from June 29, 1978 to date, July 12, 1978. I was warranted a dismissal.

I feel that the rendering decision was unduly harsh and excessive.

(1) During the course of the investigation, I made a statement "until something is done, I'm not returning to work". That was used as the supportive decision in rendering a dismissal.

(2) The Infringement upon my constitutional rights (Freedom of Speech) in which my very words were used against me.

(3) The hardship which prompted my being absent or requesting a leave, was overruled without consideration of my loss or suffering and decided as unreasonable.

An oral hearing would be so desired."

OPINION OF BOARD: The claimant, who is the petitioner herein, entered the Carrier's service on May 3, 1974. Prior to his dismissal on August 15, 1978, he held a Food Specialist Position on the extra board at Carrier's Chicago, Illinois, crew base.

From the record, it is clear that claimant was dissatisfied with a collective bargaining Agreement rule providing for double occupancy at away-from-home terminal, or layover point. In an undated letter, received by the Carrier on June 16, 1978, claimant requested a leave of absence from June 16, 1978, to September 15, 1978. On June 20, 1978, Carrier's Assistant Manager, On-Board Services, responded to claimant in part:

"Section H, 'Leave of Absence', in the aforementioned agreement states that 'Employees will be granted reasonable leaves of absence when they can be spared without interference to the service.'

Unfortunately, the particular time for which you request a leave of absence is peak summer travel and it is necessary for all employees to be available for assignment to provide proper service for our customers, the traveling public.

I must, therefore, respectfully decline your request for a leave of absence from June 16, 1978, to September 15, 1978."

The Carrier contends that from June 29, 1978, to July 12, 1978, claimant was subject to "call" and repeated unsuccessful attempts were made by his supervisors at the Chicago crew base to contact the claimant to assign him to vacancies that existed. On July 12, 1978, claimant was notified to appear for a formal investigation on July 21, 1978, on the charge:

"Your responsibility for your failure to comply with that portion of National Railroad Passenger Corporation Rule of Conduct 'L' which reads: 'Employees shall not be absent from duty without proper authority' in that you have been absent without permission from your position as Food Specialist, Chicago On-Board Service Extra Board from June 29, 1978, to date, July 12, 1978."

Rule "L" of the National Railroad Passenger Corporation Rules of Conduct, referred to in the letter of charge, reads:

"Employees shall not sleep while on duty, be absent from duty, exchange duties or substitute others in their place, without proper authority."

The claimant failed to appear for the investigation scheduled for July 21, 1978. He was then notified that the investigation would be re-scheduled for August 1, 1978, on which date it was held, with claimant in attendance, accompanied by his Organization representative. A copy of the transcript of the investigation has been made a part of the record. From our review of the transcript, we find that the investigation was conducted in a fair and impartial manner. It is clear from the record that claimant deliberately failed to protect assignments that he stood to protect during the period June 29, 1978, to July 12, 1978, even after his request for a leave of absence had been denied.

Unauthorized absences from duty are serious offenses and often result in dismissal from service. (Third Division Awards 14601, 2226, 5198, among others.) In the present case the claimant's actions were deliberate and there is no proper basis for the Board to interfere with the discipline imposed.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1981.