NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23292
THIRD DIVISION Docket Number MS-23488

Paul C. Carter, Referee

PARTIES TO DISPUTE: (K. C. Elmore
(
(Chicago and Illinois Midland Railway Company

STATEMENT OF CLAIM:

"Whether Mr. Elmore's determination of seniority was proper for an alleged violation of Rule 15(c)."

OPINION OF BOARD: The record shows that claimant was employed as a section laborer by the Carrier, with a seniority date of April 13, 1976.

On May 30, 1979, claimant made a request by telephone to his foreman for two personal days off, May 31 and June 1, 1979. The foreman did not grant the request, but referred claimant to the Chief Engineer. The Chief Engineer granted permission to claimant for leave of absence for Thursday, May 31, 1979, for personal reasons.

On June 1, 1979, the Chief Engineer wrote claimant to report for investigation and hearing on June 11, 1979, to determine his responsibility, if any, in connection with violation of Rules "P" and "W" of the Rules for the Maintenance of Way and Signal Department when he allegedly requested personal leave of absence under false pretenses and engaged in other employment on May 31 and June 1, 1979, and possibly previous dates.

Rules "P" and "W", referred to, read:

"(P) - Duties: Employes must devote themselves exclusively to the service of the railroad company, attend to their duties during prescribed hours and obey instructions of superiors.

Employes must not absent themselves from their duties nor substitute others in their places without proper authority.

Employes must give written notice to proper authority of change of residence or telephone number. They must properly respond to correspondence and to emergency calls to duty.

"While on duty, employes must not engage in any activity which may interfere with the proper discharge of their duties. Employes must not read magazines, newspapers or other literature, nor use radios or television when not connected with their work. Sleeping on duty is prohibited. Lying down or in a slouched position, with eyes closed, covered or concealed will be considered sleeping."

"(W) - Other Employment: Employes will not be permitted to engage in other employment or business without permission of their employing officer."

The investigation was postponed and conducted on June 19, 1979. In the investigation there was substantial evidence, including claimant's admission, that claimant had requested and obtained a leave of absence for personal business on May 31, 1979, and had engaged in other employment without making the necessary special arrangements in writing with the official granting the leave of absence and in accordance with Rule 15(c) of the applicable collective bargaining Agreement had forfeited all seniority rights.

Rule 15(c) of the applicable collective bargaining Agreement provides:

"RULE 15 - Leave of Absence

....

"(c) An employe absent on leave, who engages in other employment will forfeit all seniority rights, unless special arrangements shall have been made in writing with the official granting the leave of absence and copy furnished the General Chairman."

The Board finds Rule 15(c) to be clear and unequivocal. It is self-executing and an investigation under Rule 32 is not required where Rule 15(c) is applicable. We find that none of claimant's substantive Agreement rights was violated in the manner in which the case was handled. It is well settled that the Board, being an appellate tribunal, may only consider issues handled in the usual manner on the property as required by Section 3, First (i) of the Railway Labor Act. It is also well settled that disciplinary proceedings under an agreement are not criminal proceedings and that strict rules of evidence do not apply.

The Board has no alternative but to deny the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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: N. W. Pauba
Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1981.