

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23428  
Docket Number MW-23478

A. Robert Lowry, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(Seaboard Coast Line Railroad Company

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

(1) The dismissal of Cook Edward Ingram, Jr. for alleged violation of Rule 17 was without just and sufficient cause and wholly disproportionate to the offense with which charged (System File C-4(13)-EI/12-39(79-30) J)

(2) Cook Edward Ingram, Jr. shall be reinstated with seniority, vacation and all other rights unimpaired, his personal record shall be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Mr. Edward Ingram, Jr., the Claimant, was employed as a cook by the Carrier and was assigned to Extra Gang 9025, headquartered in Plymouth, N. C., with assigned hours 6:30 AM to 5:00 PM. The gang is housed in camp cars and their meals are prepared by Claimant. On January 2, 1979, the first day of the work week after the New Years Day holiday, Claimant failed to report to work on time and, therefore, failed to prepare breakfast for the gang. Carrier charged him on January 5, 1979, with violation of Rule 17 of the applicable agreement, failing to report to work at the assigned time, and set a hearing as required by the agreement for January 16, 1979.

The hearing, after a postponement, was held on January 25, 1979, copy of the transcript was made a part of the record. The Carrier on February 5, 1979, dismissed Claimant for violation of Rule 17.

The transcript reveals Claimant was given the opportunity to present witnesses in his defense which he did after the hearing was in progress. He was represented by his General Chairman and Vice General Chairman, and, they were given full opportunity to examine and cross examine Carrier's witnesses. However, a questionable procedure occurred in that the Carrier's Hearing Officer engaged in direct examination of Claimant's only witness before he was first questioned or examined by Claimant's representative! Otherwise, the hearing was fair and impartial.

A careful reading of the record including the transcript clearly indicates Carrier proved its charges. Claimant failed to report for duty at the assigned time. Claimant admitted this violation in direct testimony, stating that he had overslept and did not show up at the camp cars until somewhere between 9:00 and 10:00 AM. In his defense, Claimant contended that it

was the normal practice to not prepare breakfast on the first day of the work week since the men went home on their three day week end and ate breakfast at home before reporting to work at 6:30 AM on the first day of the work week. This gang's work week consists of four ten-hour days and three consecutive rest days. January 2nd was the first day of the work week as well as being the day after a holiday.

Carrier witnesses denied knowledge of this practice. Claimant had the opportunity to confirm the practice and support his position by questioning his only witness on this point, a witness who was employed on this gang for over three and a half months and would have had personal knowledge of the practice, but he was not so questioned. This failure lends credence to Carrier's testimony. Irrespective of the question of preparation of breakfast on the first day of the work week, testimony of Carrier witnesses and that of Claimant himself proved that he failed to report for work at the assigned time on the day in question, which was the charge. The Carrier proved its case.

The question for this Board to determine is whether the discipline was excessive or too severe. The duties and responsibilities of a camp cook may seem inconsequential to some, but this Board is confident those duties are very important to the employees on this gang working a ten-hour day. A good wholesome breakfast is vital to their welfare and ability to perform their manual duties. Thus, the Carrier recognizing its responsibility to the employees and based on the Claimant's record was justified in the severe dismissal penalty. Claimant's record does not justify leniency on the part of this Board. The record shows this Carrier as being exceedingly patient and compassionate with this employee. He was given warning letters on two occasions for violating this same rule, suspended five days on the third offense and just 30 days prior to this incident he completed 49 days of suspension for being absent without permission. The Claimant is addicted to absenteeism and the Carrier's discipline will not be disturbed.

**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. Paulsen*  
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November 1981.