

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24176  
Docket Number SG-23769

Herbert Fishgold, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company:

(a) On May 30 and June 6, 1979, the Carrier violated the current Signalmen's Agreement, particularly Rule 60 (revised) during the investigation of Signal Maintainer L. R. Wilson, and subsequent discipline assessed to him.

(b) Carrier now be required to compensate Mr. Wilson the actual time lost, which was thirty (30) days suspension, of the alleged charge, and also clear his record of the discipline, copy furnished this office." (Carrier file: D-9-1-71)

OPINION OF BOARD: Mr. L. R. Wilson, the Claimant, is employed as a Signal Maintainer by the Carrier. By letter dated April 18, 1979, Claimant was notified to appear for formal investigation on the following charge:

"Your responsibility for failing to protect your assignment on April 14, 1979 as required by Rule 16, BRSA and CNW Trans. Co. Rule Book. Also your absence from duty without proper authority on April 16, 1979 and all subsequent dates."

Following the investigation, Claimant was found guilty and suspended for 30 days.

In its appeal, the Organization maintains (1) that it is improper to include in one investigation the issue of Claimant's failure to protect the emergency service on April 14 and failure to protect his assignment on April 16 and subsequent dates; (2) that the Carrier failed to prove it attempted to call Claimant on April 14; and (3) that Claimant's absences on April 16-20 were properly excused.

The Organization's first allegation is that Rule 60 (Investigation and Discipline) was violated because it contained multiple charges and the Claimant was not made known as to specific dates involved prior to the investigation. Nothing in this rule prevents an employee from being investigated on more than one charge, as long as the charges are precise enough and allow the accused to prepare a proper defense. See Third Division Award 14573. Here, although the charge refers to April 16 and all subsequent dates, Claimant knew he was absent from April 16-20 consecutively, and at the time the notification letter was sent on April 18, Claimant was still absent and Carrier did not know when he would return to work, this constituting a continuing offense. Moreover, Claimant acknowledged at the investigation that he had been properly notified. Accordingly,

as in Third Division Award 22436, this Board finds that "(t)he wording of the notice of investigation was certainly clear enough so that he could adequately prepare his defense."

On April 14, 1979, a Saturday and Claimant's rest day, signal trouble developed on approach 483 necessitating correction. This was Claimant's assigned territory, and pursuant to Rule 16 (a) he was to either register absent if he was unavailable or notify the person designated by management as to where he could be called in an emergency. Claimant had done neither, but pursuant to an understanding between the maintainers and local company officials in De Kalb, each maintainer had a pager. Instead of signing off when away from home, they carried their pager. If the Carrier tries to contact them by phone outside their regular hours and receives no response, it calls the page number. When the man's pager goes off, he calls the dispatcher.

Claimant admits he was not home on April 14, but claims he had his pager with him and it did not go off. Moreover, the Organization claims that previous Awards by this Board have held that the Carrier must make more than one attempt to contact an employee, and that the record only shows one attempt was made. While this Board agrees that its previous Awards have held that, especially in nonemergency situations, more than one attempt to contact an employee should be required (see, e.g., Third Division Award 22422), nonetheless, the record herein shows that four separate attempts were made to reach Claimant on April 14, 1979 - two calls, one to his home and one to his pager, were made by both the Chief Dispatcher and Signal Supervisor Freund, without Claimant responding. Under these circumstances, this Board finds that the Carrier satisfied its obligation.

As to Claimant's absences on April 16-20, 1979, Claimant testified that he tried to contact the Signal Supervisor at West Chicago, as required, on the morning of April 16, just prior to the start of his shift. When he found the line busy, he called the Roadmaster's office at De Kalb, and requested the clerk to notify the signal office that he would be off on April 16. Claimant testified that this was the accepted procedure to follow when you could not reach the Signal Supervisor's office at West Chicago. As for his continuing absences on April 17-20, Claimant maintained that the call on April 16 was sufficient and that he was required to take his daughter to the hospital in Rockford for tests all week.

Even assuming that his call on April 16 was an acceptable method for reporting off, Claimant admits that he did not specify his reason for being off nor indicate when he would return to work, and further admits that he did not attempt to call back either that day or thereafter. Finally, Claimant also acknowledges that he knew well in advance of April 16 that he would be taking his daughter for extended tests. Thus, Claimant could have made arrangements to lay off prior to April 16, and should have attempted to contact West Chicago again to advise them of his need to be off the entire week. Indeed, at the investigation, Claimant was asked:

"Do you feel you notified him (your supervisor) properly in the respect that you would not be available for work and trouble calls on those days (April 16-20) without any advance information on how long you would be off?"

His reply was "No, I didn't." His failure to do so constitutes absence from duty without proper authority on April 16-20, 1979.

The evidence supports the charges. The discipline is not unreasonable. The Agreement was not violated and the claim is accordingly denied.

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 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: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of February 1983.