

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24255
Docket Number MW-24328

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it improperly withheld Sectionman Miguel Andrade from service beginning March 11, 1980 (System File 6-22-11-14-55/013-210).

(2) Sectionman Miguel Andrade be returned to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Miguel Andrade, the Claimant, was a sectionman at the Carrier's Denver, Colorado, facility with service since July 9, 1975. By certified letter dated February 25, 1980, Claimant was informed he was considered as having voluntarily forfeited his seniority and employment rights by being absent five (5) consecutive, working days without having secured proper authority.

The Organization, referring to Paragraph K of Rule 48, asserts the voluntary forfeiture of seniority of this rule has application only when justifiable reason is not shown for failure to obtain proper authority for absences. It is the Organization position that the break down of Claimant's automobile two thousand miles from home is a "justifiable reason", as contemplated by Rule 48 (K).

It is undisputed Claimant was scheduled to begin his vacation on February 4, 1980, and was due back at work on February 19, 1980. Claimant absented himself from work on February 1, 1980, without permission. On February 15, 1980, the Claimant addressed a Western Union telegraph to the Carrier's Roadmaster and the General Chairman. The General Chairman received the telegram on February 18, and relayed the content to the Roadmaster Clerk next day. The telegram stated:

"My car broke down I be there lat(t)er end a few days."

Claimant did not return to work until March 11, 1980.

The Carrier's position is that Claimant failed to justify his absence and rejected a proffered repair bill as inadequate support of Claimant's assertions of break down, especially since it was first presented to Carrier on June 16, 1981, some fifteen months after the absences. Putting aside the issue of receipt of telegram, the Board finds no basis to dispute Carrier's decision that such a communication does not constitute obtaining proper authority.

Considering Claimant's absence on February 1, 1980, and his total silence from February 15 through March 11, 1980, we will not question the Carrier's judgment that Claimant failed to receive proper authorization to be absent. Rule 48 (K) is self-executing and, under the circumstances herein, does not require handling under any rule of the agreement.

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 23rd day of March 1983.

