

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24319  
Docket Number SG-24052

Gilbert H. Vernon, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Railroad Company:

Appeal from the decision of the Carrier in the case of Signal Foreman John R. Holt who was dismissed from service for allegedly absenting himself from service in violation of Rule 11 of the Carrier's Engineering Department Rules." (Carrier File No. 2-SG-580)

OPINION OF BOARD: On June 18, 1979, the Carrier directed the Claimant to attend an investigation scheduled for June 26, 1979, on charges relating to his absence from work between April 30 and June 15, 1979. The investigation was held as scheduled. Subsequent to the investigation, the Claimant was dismissed.

The basic facts in this case are not in dispute. The Claimant was a signal foreman on the Carrier's St. Louis East End Division. The Claimant did not show for his assignment April 30, 1979. The Claimant also failed to appear for his assignment or contact the Carrier until June 15, 1979. Mr. J. W. Breeden, Supervisor, testified that he made several attempts to contact the Claimant through the postal authorities and local police and was unable to locate him. On June 15, 1979, the Claimant contacted the supervisor and requested that he be allowed to return to work.

The Organization essentially argues that the dismissal is unjustifiably severe and that the Carrier failed to take into consideration the medical reasons for the Claimant's absence. At the hearing, the Claimant testified he suffered head injuries in an automobile accident on April 26, 1979. The Organization, based on the doctor's written diagnosis of the Claimant asserts that the injuries impaired the Claimant's abilities to function rationally for a period of time after the accident and thus, caused him to leave his assignment. The excuse read as follows:

"To whom it may concern from A. Sattin, M.D. Indianapolis VA Hospital, Dept. of Psychiatry. Subject: John R. Holt. Mr. Holt was seen here today for psychiatric evaluation. One month ago following an accident he apparently had a fugue state (dissociative reaction) which caused him to impulsively leave his regular employment. At present this seems to have subsided."

Fugue, according to the Organization, is defined as "... a state of psychological amnesia during which a patient seems to behave in a conscious and rational way, although upon return to normal consciousness he cannot remember the period of time nor what he did during it; temporary flight from reality".

The Carrier, on the other hand, believes that the Claimant's medical excuse deserves little weight when the entire transcript is considered.

It is the opinion of the Board, after considering the arguments of the Parties, that the Claimant's defense fails to overcome or mitigate the prima facie case put forth by the Carrier. It is the Board's conclusion that there is substantial evidence to support the Claimant's findings that the Claimant's "fugue" excuse deserves little weight. First, it conflicts with the story the Claimant gave Mr. Breeden when he first returned and attempted to return to work. Mr. Breeden testified that in response to the question as to where he had been, Mr. Holt replied that he had some business to take care of and that he also had some trouble that had to be taken care of. Second, the medical excuse conflicts with the other testimony of the Claimant which would lead a reasonable mind to conclude that he willfully failed to report for his assignment simply because he did not want to work for the Carrier any longer. He testified as follows:

"Q39 Mr. Holt, please advise why you did not comply with this rule prior to being off the twenty-seven days you are charged with absenteeism in this investigation?

A39 I had no further intentions of further employment by the B&O Railroad.

Q40 Mr. Holt, is it true that upon your initial leave without permission from the Railroad that you had no intention of returning to work?

A40 Yes, that is true."

Regarding the Organization's argument that discharge is too severe, the Board notes that under ordinary circumstances discharge would be excessive for the first offense of absenteeism. However, the circumstances in this case are unique. The Claimant is a foreman who is presumed to be more exemplary in his conduct. The length of the absence and its willful nature are also significant. Moreover, the Board notes that the initial cause for the Claimant's absence was apparently his desire not to continue his employment. In this respect the Claimant is seen as having effectively resigned. His later desire to return to work after clearly indicating that he had no intention of continuing his employment does not overcome the Carrier's permanent termination of that employment relationship. If the Board were to require the Carrier to offer reinstatement to the Claimant, it would be setting a precedent that any employee who willfully abandons his position is deserving of reinstatement. Such a finding would be an unwarranted conclusion.

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 14th day of April 1983.