

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24357
Docket Number CL-24485

Paul C. Carter, Referee

PARTIES TO DISPUTE: { Chicago and North Western Transportation Company
{ Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station Employees

STATEMENT OF CLAIM: Carrier did not violate the Agreement with the Brotherhood of Railway, Airline and Steamship Clerks as alleged, when it dismissed Mr. Willie McGee, Yard Clerk, Proviso, Illinois, from the service of the Carrier for cause on May 7, 1981.

As the Agreement was not violated, Mr. McGee is not entitled to be returned to service with all rights unimpaired with payment for all time lost as claimed in his behalf by the Clerks' Organization.

OPINION OF BOARD: The dispute herein has been submitted to the Board by the Carrier. It involves the dismissal of a yard clerk, Willie McGee, for allegedly failing to protect his assignment on April 24, 1981.

The record shows that McGee was assigned to a yard clerk position at Carrier's Proviso Yard, with starting time of 11:59 P.M. On April 27, 1981, he was notified to report for investigation, scheduled for 8:00 A.M., May 1, 1981, on the charge:

"Your responsibility in connection with failure to protect your assignment. Specifically, your failure to report for duty, i.e., your unauthorized absence from Position 115, Yard Clerk, commencing 11:59 p.m. April 24, 1981."

The investigation was conducted as scheduled and McGee was dismissed from service at the end of his assignment which commenced at 11:59 P.M., May 6, 1981. The only testimony presented at the investigation was the statement of McGee.

The record shows that McGee was on his way to work, had stopped to eat, and his car was involved in a non-moving accident. He immediately called the Carrier's Chief Clerk to notify him of the accident. The following is an excerpt from the transcript:

"Q. Mr. McGee, when you talked to Mr. Smith, you told him that you had an accident and you would probably be late, is that the essence of the conversation?"

"A. That's what I said, I probably, I won't be able to make it in or, you know. I don't think I'm going to be able to make it in, or, I don't know, but, (inaudible), an accident, you know. So. He said that, ah, well, let's see if you, if you can try to make it in after you get done with the accident, you know.

Q. But at that time, it was up in the air then as to whether you would be in, is that correct?

A. I think so, ah, you know, I just....

Q. I didn't hear your answer, I'm sorry.

A. Well, it was up in the air I would say so, yes, sir."

There is no dispute that McGee did not contact the Chief Clerk later to advise him definitely that he would not be in. We agree with the Carrier that at some point he should have realized that he was not going to be able to get to work, and that he should have called in to so advise. Rule 14 of Carrier's General Regulations and Safety Rules reads:

"Employees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties with or substitute others in their place, without proper authority."

If this were the first disciplinary case involving McGee, we would agree that dismissal was harsh and excessive. However, his prior work record, since being employed in 1978, was far from satisfactory, the latest entry being dismissal on March 9, 1981 and reinstatement on a leniency basis on April 6, 1981. The Carrier could properly consider claimant's prior record in arriving at the discipline to be imposed.

The Board has noted the Organization's contention that McGee's procedural rights were violated in the handling of the dispute on the property because of the same officer acting in multiple capacities, and claimant allegedly being denied full right of appeal. We find no proper basis for such contention. Furthermore, the record shows that no such contention was made in the handling of the dispute on the property, and it is well settled that issues and defenses not raised in the handling of the dispute on the property may not properly be raised for the first time before the Board.

The claim of the Carrier will be upheld.

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.

A W A R D

The dismissal of clerk Willie McGee is upheld.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of May 1983.