

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24574
Docket Number MW-24784

Paul C. Carter, Referee

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

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

(1) The dismissal of Trackman J. F. Rolax for alleged violation of Agreement Rule 17(b) was without just and sufficient cause, unwarranted and on the basis of unproven charges [System File 37-SCL-81-12/12-39(81-19) G].

(2) Trackman J. F. Rolax shall be reinstated with seniority and all other rights unimpaired, his record be cleared and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Prior to his dismissal, Claimant was employed as a trackman in Carrier's Timbering and Surfacing Gang No. 8589, which, at the time of the occurrence giving rise to the dispute herein, was located at Tyrone, Ga. The gang worked four ten-hour days per week, Monday through Thursday, and the employees assigned lived in camp cars during the work week.

Claimant, who had been in service about three and one-half years, was absent from work on Monday, March 2, 1981. On March 11, 1981, he was charged:

"My records indicate that you did not protect your assignment as Trackman on T&S Force Gang 8589 on Monday, March 2, 1981.

Account your failure to report and protect your assignment as Trackman on T&S Force 8589, Tyrone, GA, on March 2, 1981, I am preferring charges against you for violation of Rule 17(b) of the agreement between the Seaboard Coast Line Railroad and its Maintenance of Way Employees effective July 1, 1968, reading in part: 'An employee desiring to be absent from service must obtain permission from his foreman or the proper officer ...'

This is to advise you that a hearing will be conducted in the Dining Car of T&S Force Gang 8589 at Tyrone, GA, on Friday, March 20, 1981, at 11:00 A.M., at which time you will be present to answer the charges against you.

"You may be represented by the duly accredited representative of the employees, and you may have present any witnesses you desire who have knowledge of this matter. It will be your responsibility, however, to arrange for their presence. Your personal record will be subject to review in the hearing."

The charge was signed by the Roadmaster.

The record shows that the time and place of the hearing was changed by the Carrier, apparently for its convenience, about three times and was finally conducted in the Dining Car of the gang at Union City, on March 20, 1981.

The record shows that the Claimant and three other laborers assigned to the gang, who lived in the vicinity of Woodland, Ga., said to be some forty miles from Tyrone, Ga., where the camp cars were located, left home in the early morning of March 2, 1981, riding in Claimant's automobile, in plenty of time to normally reach Tyrone before the starting time of the gang. According to the Claimant, car trouble developed about 5:00 A.M., between Gay and Woodbury; the men in the car finally got it started about 7:00 A.M.; they returned to Manchester to a Ford garage to get the car repaired. They arrived in Manchester about 9:00 or 10:00 a.m.; the car remained in the garage until about 1:00 or 2:00 p.m., at which time Claimant went to the yard office in Manchester and sent a wire to the Roadmaster that the men would not be able to report for work that day, and the reason for not reporting. He reported for duty the next day, March 3, 1981. The Carrier complains that the wire was not received by the Roadmaster until the third day, or on Thursday. We do not think that the trackmen could be charged with knowledge that the wire would not be delivered. Such an arrangement was of Carrier's making. We can understand why the laborers would consider sending the wire as the safest way to get the message to the Roadmaster.

Based upon our study of the entire record, we are forced to the conclusion that the Carrier has engaged in considerable "hind sight" in this case, which is usually 20/20. It says, for example, that there were places between where the car broke down and Tyrone where the car could have been fixed. It names no specific place. It speaks of other transportation being available, but does not identify it. It speaks of no garage receipt or other evidence of repairs. In the hearing, or investigation, the Claimant stated that he had a bill at home. The issue was not pursued further. The Carrier's highest officer of appeals stated: "With just a little effort, these employes could have gotten to the jobsite." He does not explain how. (No discipline may properly be assessed on the basis of speculation, conjecture or assumption. Discipline may only properly be based on facts developed in the investigation,) and it is well understood in the railroad industry that in discipline cases, the burden of proof is on the Carrier.

Considerable is said by the Carrier about the Claimant not receiving permission to be absent. The question arises as to how permission could have been obtained in advance when the absence was caused by automobile failure. As stated in Award No. 20198:

"... in the absence of a clear showing of alternate transportation to work, it could not reasonably be said that car trouble is not good cause for a one-day absence from work. The role of the automobile in American life is too well known to require discussion."

We can understand the Claimant's anxiety to get his car repaired as promptly as possible.

We do consider the Claimant guilty of:

1. Not notifying the Roadmaster or some Carrier officer, immediately upon his return to Manchester around 9:00 or 10:00 a.m. of his predicament.
2. Not proceeding directly to the jobsite at Tyrone immediately upon the release of his car from the garage.

For the two reasons listed, discipline was warranted, but even when considered along with his past record, which we do not think is as terrible as the Carrier would have us believe - two fifteen day suspensions in cases where he waived investigation or hearing, permanent dismissal was excessive. It does not appear that Claimant intentionally failed to protect his assignment. The trouble was caused by an unforeseen mechanical failure. The time that Claimant has been out of the service should constitute sufficient discipline. We will award that he be restored to the service with seniority and other rights unimpaired, but without any compensation for time lost while out of the service.

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 discipline was excessive.

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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 15th day of December 1983.