

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24790
Docket Number MW-24405

Edward M. Hogan, 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 William Jones, Jr. for alleged violation of Rules "17(b)" and "18", was arbitrary, capricious and without just and sufficient cause [System File C-4(13)-WJ/12-39(80-44) G].

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

OPINION OF BOARD: Claimant was dismissed from the service of the Carrier on April 25, 1980, following a formal investigation on April 16, 1980, on the charges of violation of Rules "17(b)" and "18". In essence, the Carrier charged the Claimant with insubordination, desertion, and failure to obtain permission of his supervisor to be absent from his regularly assigned duties. On the afternoon of March 26, 1980, as well as on March 28, 1980, Claimant had requested and obtained permission from his foreman to absent himself from his assigned duties due to the pending birth of his child. His child was born on March 28, 1980. On March 30, 1980, the Claimant became aware that, because of medical complications suffered by the child, it would be necessary to transfer the child as soon as possible to a medical facility equipped to handle such complications in another city. Approximately one hour after hearing of these complications, the Claimant phoned his immediate supervisor to request permission to be absent from his assignment during the following work weeks so that he could be present and assist with the transfer of his child to a larger medical facility. Claimant further requested that he be placed on vacation during this time.

Claimant's supervisor, who knew of the child's recent birth, denied the Claimant permission to be absent, but that if written proof could be furnished by that afternoon, it was possible that other arrangements could be made. The Claimant advised that he would secure written proof of the child's medical complications, but it would be difficult, if not impossible, to secure such proof that afternoon. Later that same afternoon, the Claimant phoned the home of the Carrier's Roadmaster, but found that he was not at home. The Claimant left word with the Roadmaster's wife that he would be on vacation during the following week.

As a result of the above actions, the Claimant was charged with various rule violations including insubordination, desertion and failure to obtain permission of his foreman to be absent.

The Organization contends that the evidence as adduced at the formal investigation does not support the findings, nor the discipline assessed, of the hearing officer. Furthermore, the Organization contends that the discipline assessed, under the particular circumstances of this case, are an abuse of discretion by the Carrier.

The Carrier argues that the dismissal was justified and that the investigation was fair and impartial. Additionally, the Carrier cites numerous precedents of all Divisions of the Adjustment Board that this Board will not substitute its judgment for that of the Carrier in disciplinary matters unless there is a showing that discipline was arbitrary or capricious, issued in bad faith or would amount to an abuse of the Carrier's discretion, as well as longstanding precedent of this Board that it is the Carrier's prerogative to assess discipline and that this Board will not disturb the discipline as long as it is neither arbitrary, capricious, discriminatory nor abuse of the Carrier's discretion.

After a thorough examination of the record before this Board, we cannot agree with the arguments of the Carrier that the Claimant's personal lifestyle took precedence over his employment with the Carrier or that his deliberate refusal to report to work under the circumstances is presented to us for review. While we note the relatively short duration of the Claimant's service with the Carrier, in his previous warnings with respect to absenteeism, we do not believe that the evidence as presented to us in this record supports the discipline of dismissal.

This Board has consistently upheld and supported the Carrier's requirements and duty to enforce provisions of the agreement calling for the regular attendance of employees to their assigned duties, absent valid periods of sickness or unforeseen and extraordinary circumstances. Indeed, this Board has so consistently stated its long-standing position that an employee has an affirmative duty to protect his assignment. Our examination of the record indicates that the facts presented to this Board clearly indicate an unforeseen and extraordinary circumstance--medical complications to a newly-born infant--which we do not believe warrant the extreme penalty of dismissal. However, because of the Claimant's previous warnings with respect to protecting his regularly-scheduled assignment, we believe that the Claimant should be reinstated to the service of the Carrier with seniority unimpaired but without compensation for time lost.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and Employes involved in this dispute are respectively Carrier and Employes 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 as excessive.

A W A R D

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 30th day of April, 1984