

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25040  
Docket Number MW-25084

M. David Vaughn, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Seaboard System Railroad

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

(1) The dismissal of Trackman J. J. Neal for violation of Rule 17(b) was excessive and an abuse of justice and discretion by the Carrier (System File 37-SCL-82-3/12-39(82-1066) K).

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

OPINION OF BOARD: Claimant J. J. Neal was employed by the Carrier as a Trackman. He failed to report for work on September 14, 1981 and thereafter, without obtaining permission from the Carrier for his absence. On October 19, 1981, the Carrier notified Claimant that it assumed from his absence that Claimant had no further interest in his job and was writing him out of service absent contact within ten days. That letter and a second letter to the same effect received no response. When Claimant contacted the Carrier on December 17, 1981, for the first time since failing to report on September 14th, and sought to reclaim his job, the Carrier charged Claimant with violation of Rule 17(b) of the then-current Agreement between the parties. Rule 17(b) states:

"An employee desiring to be absent from service must obtain permission from his foreman or the proper officer. In case an employee is unavoidably kept from work, he must be able to furnish proof of his inability to notify his foreman or proper officer."

Following an investigation, Claimant was dismissed from service for failure to protect his assignment.

Claimant acknowledges that he failed to report for work from September 14th on and that he did not have permission to be absent. Indeed, Claimant admits that he made only the most desulatory efforts to contact the Carrier to apprise them of his impending absence and no effort to get back in touch with the Carrier until December 17th. Claimant asserts that he did not receive a communication from the Carrier giving him ten days within which to contact them or have no job until after the expiration of the period, after which he assumed that he no longer had a job.

Claimant recited various difficulties arising from his domestic problems as the reason for his absence. Those claimed difficulties included divorce proceedings, warrants, bill collectors, a "torn-up" car and additional court proceedings, all arising from his domestic situation. While those difficulties are not detailed in the record, neither are they refuted by the

Carrier. The record contains no indication that the Carrier ever challenged Claimant's explanation for his absence; rather, the Carrier took the position that the explanation, even if true, was not sufficient to satisfy the Rule. The Board therefore accepts as true for the limited purpose of this proceeding Claimant's explanation of the reasons for his absence.

The explanation offered by Claimant is not, however, sufficient to justify Claimant's failure to protect his assignment. Nor does it excuse Claimant from his obligation to communicate his desire for a leave of absence, his then-current status and continued interest, if any, in his position with the Carrier.

The Carrier has every right to expect that its employees will comply with their obligations to report for duty and to keep the Carrier informed if, for valid reason, they cannot. Such communications serve more than a mere bookkeeping function; knowledge of the status of employees is crucial to the scheduling and accomplishment of work, and the failure of employees to report for work and to give accurate, complete and timely information as to their status when they do not report materially interferes with that function.

The Organization concedes that Claimant violated the Rule, that the violation was serious and that his conduct warrants discipline. However, the Organization argues, based on the extenuating circumstances which contributed to Claimant's prolonged absence and on his service with the Carrier, satisfactory save for the two letters of caution, that the penalty of dismissal was excessive.

Claimant had approximately four and one-half years of service with the Carrier at the time he failed to report for work. But for two letters of caution for previous Rule 17(b) violations, for durations not stated, Claimant's service with the Carrier was satisfactory. He received no disciplinary suspension for either of the prior violations. Claimant appears, therefore, to have been a decent employee.

Claimant's violation was concededly serious and his absence prolonged. The Board rejects the Organization's assertion that Claimant's circumstances made it impracticable to contact the Carrier or that his feeble efforts satisfied the obligation that remained. However, the Board accepts the Organization's argument and Board precedents which hold that discipline can be rehabilitative in nature and that severe discipline should be reserved for situations in which the employee is unlikely to be salvageable. See Third Division Awards 5372, 14113, 19037. The Board concludes, therefore, that the Carrier's dismissal of Claimant was an excessive penalty.

However, since Claimant's absence was prolonged and the reasons cited to justify his failure to contact the Carrier so feeble, the Board declines to compensate Claimant for wage losses suffered and will reinstate Claimant with seniority unimpaired but without pay for time lost. Claimant should understand that further Rule 17(b) violations without good and sufficient reason would almost certainly justify dismissal.

*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 discipline is 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 26th day of September 1984.*