

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25171  
Docket Number MW-25085

M. David Vaughn, Referee

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

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

(1) The dismissal of Trackman J. Mays for being absent without permission on December 1, 1981 was excessive and an abuse of justice and discretion by the Carrier (System File 37-SCL-82-1/12-39(82-1065) 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. Mays was employed as a Trackman and on November 30, 1981, Claimant was assigned to duty on a track gang. He was instructed to report to his Foreman at the conclusion of his shift to discuss Claimant's recovery from an injury and the light duty to which he had been assigned that day, after failing to perform his Trackman duties. Claimant failed to report. The next day, Claimant was scheduled for duty, but failed to report at all and failed to notify his supervisor during his scheduled shift of the reason for his absence.

Following notification, the Carrier conducted an investigatory hearing and, based on the results of the hearing, dismissed Claimant for violation of Rule 17(b), which 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."

Appeals filed on Claimant's behalf by his Organization were unsuccessful, and the case was brought before this Board.

It is undisputed that Claimant was absent from service on December 1st, that he did not have permission from his Foreman or any other Carrier official to be absent and that he did not notify the Carrier of the reasons for his absence until after his return.

Claimant asserts instead that he was called unexpectedly to escort his fiancée to the hospital for a medical emergency. He stated that he attempted to notify the Carrier by telephone of the reason for his absence one time but that the telephone was busy and he did not try again.

On Claimant's return, he produced a paper purporting to be from a doctor at the hospital indicating that Claimant had been at the hospital on December 1st, but the Carrier's witness testified that the hospital had no employe of any rank with the name with which the paper was signed. The letter was not on hospital letterhead and contained misspelled and improper words. The Carrier notified Claimant at the time he submitted the paper that it would not serve as an acceptable excuse and suggested that he obtain a more official document. Claimant failed to do so.

The Carrier has every right to expect that its employes will comply with their obligations to report for duty and to keep the Carrier informed if, for valid reason, they cannot do so. Knowledge of the status of employes is crucial to the scheduling and accomplishment of the Carrier's work. An employe's absence without good reason and without reporting materially interferes with those Carrier functions.

It is clear from the record that Claimant was absent in violation of Rule 17(b). In light of Claimant's lack of a credible excuse for his absence and the apparent misrepresentation of his whereabouts, the Board cannot conclude that the penalty of dismissal imposed by the Carrier was excessive or an abuse of discretion. Claimant's prior disciplinary record offers no basis to mitigate the penalty. He had, from February 14, 1980 until the date of the incident here at issue been disciplined five times, including 55 days of actual suspension. Accordingly, the Carrier's action will be upheld and the claim will be, and it is, denied.

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 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 Agreement was not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1984.