

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25204
Docket Number MW-23485

Herbert Fishgold, 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 discipline assessed Metal Bridge Mechanic Elijah Rivers (letter of reprimand) was without just and sufficient cause and on the basis of unproven and disproven charges (System File 37-SCL-77-77/12-39(79-27) J).

(2) Said letter of reprimand shall be expunged from the Claimant's personal record.

OPINION OF BOARD: Claimant E. Rivers was employed as a Metal Bridge Mechanic, and had 15 years of service for the Carrier. On February 6, 1979, Claimant was assigned to Metal Bridge Force 7814, working under the supervision of Foreman R. F. Garnett. The Bridge Gang is a system floating gang, and on the date in question, it was making bridge repairs at North Little Ogeechee River Bridge near Anderson, Georgia. The crew was housed in camp cars located in that vicinity.

The weather that day had been cold and rainy. After the gang had lunch, the employes were getting into the truck to go back to work. One of the Bridge Mechanics, Bailey, told Foreman Garnett that he was not going back to work that afternoon because of inclement weather, and began to walk toward the camp cars. At this same time, Claimant was seen walking behind Bailey in the direction of the camp cars as the truck started pulling off. Neither Claimant nor Bailey worked that afternoon.

Claimant was charged with violation of Rule 17(b): being absent without obtaining permission from his Foreman and failing to notify his Foreman of his absence; and with violation of Operating Rule G-1 and Safety Rule No. 18. Concerning Claimant's and Bailey's absence without permission, it was determined that Bailey should be suspended for five days. As for Claimant, it was determined that under the circumstances, there was not sufficient evidence to find insubordination, but that a letter of reprimand was in order for the violation of Rule 17(b).

There is a conflict in the record as regards the reason Claimant did not work on the afternoon of February 6, 1979. According to Claimant, as he was enroute to join the employes boarding the truck, he stopped to relieve himself. He then noticed the truck pulling away, and claims he hollered to Garnett, who then stopped the truck momentarily, but, then resumed driving off. Believing himself left behind, Claimant then went into the camp car to get out of the rain, and stayed there the balance of the day with Bailey.

According to Garnett, after lunch he told the employees to get back to work. Bailey came to him and said he was not going to return to work because of the bad weather. As the truck began pulling away, Garnett looked in his rear view mirror and saw Claimant walking behind Bailey toward the camp cars. He claims he did not hear Claimant holler, nor did Claimant wave or give any indication that he was going to get back on the truck. Garnett continued to drive on, but because the weather remained inclement, he brought the gang back to the tool car to work inside for the rest of the day. The tool car is 20 yards from the camp car, and although the gang worked in the tool car the rest of the afternoon, Claimant did not return to work.

The Organization contends that the discipline to Claimant was without just and sufficient cause because he had no desire or intention to be absent from work. In support of this position, the Organization notes that another employe corroborated Claimant's assertion that he hollered at the truck, and that although it stopped momentarily, Garnett proceeded to drive away without waiting for Claimant. Moreover, Claimant contends that since he believed the gang was going back to its previous location, he was unaware that the gang came back to work in the tool car that afternoon. Accordingly, he stayed in the camp car because it was raining.

Under all the circumstances, the Board finds that the Carrier did have just and sufficient cause to issue a letter of reprimand to Claimant for his absence from work on the afternoon of February 6, 1979 without obtaining permission from his Foreman. Although Claimant alleges he merely stopped to relieve himself prior to getting back on the truck, and then shouted for the truck to stop, nonetheless the record shows that he neither told anyone not to let the truck leave without him nor made any effort to get on the truck when it stopped. When asked at the hearing why he did not head towards the truck when it stopped, Claimant replied he was "shocked". The record further shows that he then went to the camp car with Bailey, who had just advised Garnett that he would not work in the rain. Claimant further admits that he made no other effort to return to work, but rather stayed in the camp car the rest of the afternoon.

Considering that Claimant was only given a letter of reprimand, the Board does not find the discipline to be unwarranted since Claimant was absent from his assigned duties without proper permission from his Foreman.

Accordingly, the claim 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

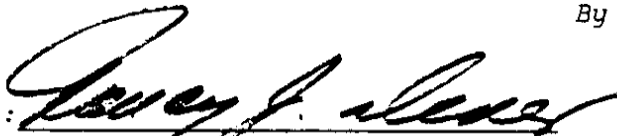
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1985.