

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25461
Docket Number MW-25306

Herbert L. Marx, Jr., Referee

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

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

(1) The sixty (60) days of suspension imposed upon Bridgeman R. C. Cook for alleged "violation of Rule 17B" and for alleged "violation of Rule 18" was without just and sufficient cause [System File C-4(13)-RCC/12-39 (82-1106) K3].

(2) The claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Following an investigative hearing, the Claimant was assessed a disciplinary penalty of 60 days based on violation of Rule 17(b) and Safety Rule 18.

Rule 17(b) reads as follows:

"(b) 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."

Safety Rule 18 reads in pertinent part: "...desertion...will subject the offender to dismissal."

Claimant was assigned to Bridge Force 5387, headquartered at Piedmont, Alabama, and housed in camp cars. The force was assigned to work four ten-hour days, Monday through Thursday. During the week of January 11, 1982, the work force was in an area experiencing severe winter weather. At the conclusion of the work day on Tuesday, January 12, the Claimant spoke to his Foreman and either asked permission to "go home" for the remainder of the week or simply advised the Foreman that he was leaving. In either case, the Foreman asked the reason for the proposed departure, and the Claimant said he wanted to avoid the severe weather and return home to Atlanta, about ninety miles away. The Foreman did not give permission to the Claimant and advised him that, if he was absent on the subsequent work days, the absence would be reported.

The Claimant nevertheless left the work site and was absent for the following two work days without making further report to the Carrier.

Whatever the Claimant's fears as to the effect of the winter storm on working and rest conditions at the work site, there can be no question that he improperly left his assignment unprotected. Such action may not be condoned, especially since there is no question that work forces such as this one may well be called upon for emergency duty in such circumstances. The Claimant did, at least, advise his Foreman of his wish to leave, but beyond this there can be no question that he was knowledgeable that he was improperly leaving his assignment without permission and with the warning that there would be adverse consequences to his absence.

The penalty of a 60-day suspension is substantial, but the Board finds it within the Carrier's proper judgment, particularly in view of two previous letters of caution concerning protection of assignment, one of which was received within the previous six months.

As a procedural matter, the Organization objected to questions in the investigative hearing concerning the Claimant's absence on Monday, January 11 and part of Tuesday, January 12. Reference to such absence was not included in the Carrier's decision letter following the hearing, and the Board finds that these questions did not prevent the Claimant from receiving a fair hearing.

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.