

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25841
Docket Number MS-26100

John W. Gaines, Referee

PARTIES TO DISPUTE: (William R. Bell and Tom Trass
(
(Illinois Central Gulf Railroad

STATEMENT OF CLAIM:

"This is to serve notice as required by the rules of the National Railroad Adjustment Board, of our intentions to file an ex parte submission on (30 days from date of this notice) covering an adjusted dispute between us and the Illinois Central Gulf Railroad involving the question of dismissal.

According to the Illinois Central Gulf Railroad, we abandoned our position according to rule #38. We, therefore, quote from the (Schedule of Rules and Working Conditions governing the several classes of employees in the Maintenance of Ways and Structures Department on the lines of the Illinois Central Gulf Railroad Company) including all revisions through January 1, 1983.

Rule #38 states, and I quote, 'An employee who is absent from his assigned position without permission for seven (7) consecutive workdays will be considered as having abandoned his position and resigned from service.

After reading rule #38, we still have not found where it states that an employee is totally responsible for getting a message to his supervisor in case of illness. If this is the case, a wife, or mother, or doctor could not inform the company of a illness, if he is not able to do so himself.

Jim Mann informed Harry Johnson of my illness, who in turn gave him 3 days off and denied ever talking to him. I, in turn informed Harry Johnson of Tom Trass' illness and was given 2 days off. Mr. Mann, and Mr. Trass, will be witnesses to this fact, along with the numerous copies of letters from the ICGRR."

OPINION OF BOARD: The absence from service of Claimants William R. Bell and Tom Trass took place on and after October 7, 1983. Up to that time at which they allegedly abandoned their positions, Claimants were serving in Maintenance of Way work for Carrier as Machine Operators in a Tie Gang.

On October 25 and 26, 1983, Carrier sent notification of dismissal to Claimant Trass and to Claimant Bell, respectively. Notification was the same in each case, reading:

"Per Rule 38 of the current working agreement, you are hereby dismissed from the service of the Illinois Central Gulf Railroad for having abandoned your position without proper permission for seven (7) consecutive days. . . ."

We are able to find no alternative for Carrier but to consider the Claimants as having resigned under the provisions of Rule 38, quoted as to its essentials in the Statement of Claim.

The Rule speaks for itself. It places the burden squarely on Claimants to avoid those consequences. Absenteeism can cause serious disruption in a Carrier's essential operations. A Foreman of a Work Gang should be able to expect an adequate complement to carry out his function.

The Claimants make similar assertions regarding contacting the Carrier. Each one asserts that, in his own behalf, some third party intervened to the Foreman involved and, on October 12 in the instance of Claimant Trass and October 18 in the instance of Claimant Bell, such third party satisfactorily explained the continuing absence by reason of that Claimant's illness. To the contrary, their Foreman's October 18 report of unexplained and unexcused absences was the very basis for the ensuing notification of dismissal of each Claimant.

It is the employee's responsibility to contact the Foreman. That responsibility is not readily transferred, if it is transferable at all. So primary responsibility devolves upon the individual Claimant to see to it early on that he obtain official permission for his continuing absence.

We have carefully considered the position taken by the two Claimants, and are of the opinion that the Claim of each is without merit.

Carrier raises a procedural point in connection with the main issue. It will not be necessary for us to address the point because of our treatment above in disposing of the issue on its merits.

Claimants requested a Referee Hearing and both were present.

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 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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of January 1986.