

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company

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

(1) The thirty (30) demerits imposed upon Laborer R. V. Perez for alleged 'violation of General Rule B, and General Regulation 702 and 702(B)' was without just and sufficient cause and on the basis of unproven charges (System File D-4/013-210-P).

(2) The claimant's record shall be cleared of the charges leveled against him and the thirty (30) demerits imposed upon him in connection therewith."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Following an investigative hearing, the Claimant received a disciplinary penalty of 30 demerits for "unauthorized absenteeism" on Monday, February 13, 1984, and for failing to notify his Supervisor of his absence.

The record establishes that the Claimant failed to report for duty on February 13. The Claimant testified at the investigative hearing that he had advised his Acting Foreman on Friday, February 10, as well as on Monday, February 13, of his prospective absence. The Carrier concluded that he had not, in fact, received (and possibly not requested) permission to be absent. Review of the record leaves the Board convinced that the Carrier had substantial basis for this conclusion.

The Claimant testified as to talking with a fellow crew member, who at times served as Acting Foreman, during the week before, as to a prospective absence because of a sister's illness. Yet he did not know then that the other employee would be serving as Foreman on February 13. His account is quite confusing, as indicated by this exchange with the Hearing Officer:

"Q. Mr. Perez were you absent Monday, February 13, 1984?

A. Yes I was.

Q. And did you notify either Mr. Brown or Mr. Barron [the Acting Foreman] that you would be absent?

A. Yes I talked to Mr. Barron.

Q. When did you talk to Mr. Barron?

A. We talked about a week before about my sister and I told him that I would be off the following week. He can't recall my phone call I told him I wouldn't be in.

Q. You said the following week. Do you mean the preceding?

A. The week before.

Q. You talked to him on Thursday?

A. Thursday or Friday.

Q. Did you ever give a specific date that you would be going?

A. No it wasn't a specific date. I told him I would be going Monday was the day I left. . . .

Q. Let me rephrase that. Have you received instruction from the company of the proper procedure to request a day off?

A. Did I receive a letter form wise?

Q. Any verbal instructions?

A. The only verbal instructions that I got was when he told me to call in the office or notify your foreman, otherwise I never received any.

Q. Per the verbal instructions from Mr. Brown, are you to notify him in advance if possible?

A. If possible.

Q. And if not possible, call him at his house?

A. I don't have his home number. I never had his home phone number.

Q. Could you have called Mr. Barron and told him that you were going to be off?

A. Yes, we did call Mr. Barron.

Q. At home?

A. Yes I did.

Q. Did Mr. Barron answer?

A. Yes he did.

Q. When did you call Mr. Barron at home?

A. It was Friday night. I called in Monday, they knew I was suppose to be off."

Equally indefinite is the Claimant's account of a further telephone conversation with the Acting Foreman on Monday morning.


The Board finds no basis to question the Carrier's conclusion that the Claimant was, in fact, absent without authority on February 13, 1984. Given the Claimant's previous poor attendance record, the degree of penalty (30 demerits) was appropriate.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1988.