

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 27041
Docket No. MW-26742
88-3-85-3-496

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Missouri-Kansas-Texas Railroad Company

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

(1) The ten (10) days of suspension imposed upon Track Laborer J. R. Browning for allegedly leaving work without permission 'at approximately 8:30 P.M. on or about Thursday, June 21, 1984 at Ft. Worth, Texas' and for alleged absence from duty without permission on Friday, June 22, 1984 was unreasonable and unwarranted (System File 300-279/2579).

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

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

After postponement, Hearing was held on August 7, 1984, to consider possible violations by Claimant in that he was twice absent without permission. Carrier alleged that on June 21, 1984, Claimant left the scene of a derailment where he was working and failed to again report for duty on the next day. Subsequently, Claimant was found guilty as charged and assessed a ten (10) working days suspension.

It is the Organization's position that Claimant was not accorded the full measure of his rights, nor was he guilty as charged. The Hearing Officer did not attempt to determine why Claimant left the work site. The reviewing officer neither considered same, nor gave weight to the fact that Claimant had informed Foreman Pullen that he was going to a doctor on June 22, 1984.

Carrier argues that Claimant did not request and receive permission to leave the work site or to be absent from work on the next day. His failure to receive permission was shown in the record and the discipline assessed was fully justifiable.

The Board finds no procedural violations in its review of the Hearing. As to merits, there is no question from the record that Claimant was aware that he should await permission prior to leaving work. There is no dispute that Claimant left the work site on or about 8:30 P.M. on June 21, 1984, and was absent from work on June 22, 1984. Neither absence was with the appropriate permission.

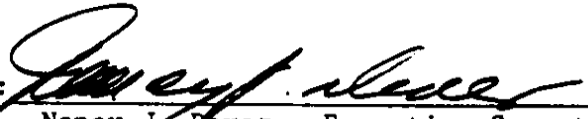
The Claimant asserts that he had foot pain and had reported this condition a full hour prior to leaving work. The Board's review indicates that such is not refuted and stands. Nevertheless, the question before this Board is whether there is sufficient probative evidence for a finding that Claimant was absent without permission. There is no question from this record that Claimant is guilty as charged.

The remaining question is whether the assessed discipline was commensurate with the circumstances at bar. In that respect, the Board notes that Claimant was clearly told that he had "better think about it" before he left work or he "might get in trouble about it." Although Foreman Pullen was aware that Claimant planned to go to the doctor on June 22, 1984, he not only did not give Claimant permission to leave, but warned him to await the Assistant Roadmaster's return. Claimant chose to leave without permission. In addition, although he claims he was in pain and left to go right home, the record is clear that he was asleep in his car and did not leave until around 5:00 A.M. Yet, he did not get permission prior to leaving, or the next morning for his absence that day. And lastly, considering the Claimant's past record only in terms of the quantum of discipline, the Claimant was twice cited by letter with a warning of unauthorized absenteeism. For all of the above stated reasons, the Board will not disturb the Carrier's action in this case.

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 25th day of April 1988.