

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Soo Line Railroad Company (formerly Chicago, Milwaukee,
(St. Paul and Pacific Railroad Company)

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

(1) The dismissal of Extra Gang Laborer A. Belmont for alleged 'failure to protect your assignment ... and for your failure to notify your immediate supervisor on November 12, 1984' was unwarranted and without just and sufficient cause (System File C #15-85/D-2678).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared of the charges 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.

Claimant, an employee with a seniority date of May 5, 1981, was employed by the Carrier as an Extra Gang Laborer at the Carrier's Bensenville Yard. By letter dated November 12, 1984, Claimant was dismissed from service for failure to protect his assignment and failure to notify his supervisor. Hearing was held on December 7, 1984, and by letter dated December 12, 1984, the dismissal was upheld.

Claimant began working under Roadmaster A. R. Bobby on October 16, 1984, after exercising his rights under Rule 8(c). On October 17, 1984, Bobby spoke to Claimant and advised Claimant of the importance of being at work every day. Bobby further reminded Claimant to follow the prescribed rules to make sure that he calls when he cannot come in. Claimant indicated that he

was aware of the proper procedure for calling to mark off. The procedure is for the employee to call the Foreman and if no response is obtained, the employee is to call Timekeeper G. Phillips. According to Phillips, Claimant has utilized that procedure in the past and has called him personally. Bobby testified that he spoke to Claimant on October 17, 1984, because Claimant was fifteen minutes late on the first day of his assignment under Bobby and Bobby knew Claimant before from working in his territory.

Claimant's rest days were Saturday and Sunday. On Sunday, November 11, 1984, Claimant broke his ankle while jogging. Claimant was scheduled to work on November 12, 1984, from 7:00 a.m. to 3:30 p.m. and did not report at his starting time. Claimant testified that he was staying at a friend's house and tried to call the Foreman's shanty between 6:00 and 6:15 a.m. but received no answer. Claimant further testified that he was under medication for pain and went back to sleep and tried to call again between 9:00 and 9:30 a.m., again without success. According to Claimant, "I didn't have Mr. Glen Phillip's [sic] number at the moment at that time because I stayed out in Chicago that day, out at a friends (sic) house." Claimant further testified that he did not try to call directory assistance to obtain Phillips' phone number.

Between 1:30 and 2:00 p.m. Claimant came to the Yard walking on crutches. Claimant gave Phillips a medical slip concerning a previously suffered injury to his finger (which was also broken) and inquired about the procedure for obtaining a leave of absence due to the new injury to his ankle. Claimant informed Phillips that he spent a good deal of time at an emergency room due to the injury to his ankle. Claimant was then informed of his dismissal by a letter from Bobby. Claimant's position was not filled that day.

Claimant's prior disciplinary record shows a five day suspension on August 4, 1982, for failing to protect his assignment; a warning dated November 9, 1982, for absenting himself from his assignment; a letter of reprimand dated July 9, 1984, for failing to protect his assignment; another letter concerning tardiness and a seven day suspension on October 3, 1984, for failing to protect his assignment.

First, we are unable to consider the Organization's argument concerning an alleged procedural infirmity resulting from the issuance of the decision after the hearing by someone other than the hearing officer. That argument was not raised on the property.

Second, with respect to the merits, we find substantial evidence exists in the record to support the Carrier's conclusion that Claimant failed to protect his assignment as charged and failed to notify supervision. Claimant was well aware of the proper procedure for calling off and did not follow that procedure. Under the circumstances, the fact that Claimant did not have the Timekeeper's phone number with him does not change the result since Claimant made no effort to obtain the number through other means. Considering the fact that Claimant has been disciplined in the past on several occasions for


the same misconduct, Claimant should have known how to call the appropriate authority. In light of Claimant's past discipline and further considering that Claimant was reminded by Bobby a few weeks prior to the incident of the need to be at work or call in if he was unable to come to work, we are unable to conclude that the imposition of dismissal was either excessive, arbitrary, capricious or an abuse of discretion. We must therefore deny the Claim.

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 17th day of May 1988.