

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Oklahoma, Kansas and Texas Railroad Company

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

(1) The dismissal of Laborer R. Holland for alleged insubordination on October 31, 1985 and absence without authority on November 1 and 8, 1985, was without just and sufficient cause and excessive (System File OKT-D-1214/-2579-OKT).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired 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 was working in Fall 1985, as Laborer on an extra Gang No. 991, under the supervision of Foreman Hill. On October 31, 1985 Foreman Hill instructed Claimant to work with other employees in repairing a wide-gauge bridge. Claimant refused, stating in words or substance that he did not think it was his job to work on the bridge and that he would do something else while the others worked on the bridge. Later that day, Claimant told Foreman Hill and Assistant Roadmaster Harrison that he wanted to be released early the next day, November 1, 1987, to attend to some personal financial business in Arkansas. It is not disputed that these Supervisors told Claimant they could not approve his request for time off but he could seek permission from the Roadmaster, Division Engineer, or Assistant Division Engineer.

Claimant made no attempt to contact proper authority for permission to be absent but rather took the day off without permission. A week later, on November 8, 1985, Claimant approached Foreman Hill at approximately 4:45 and asked to quit 15 minutes early so he could converse with his union representative concerning bumping rights. The Foreman denied this permission and told

Claimant to finish work until 5:00 P.M. In Claimant's own words, he understood that his Foreman was not authorizing an early quit but he "... took it upon myself to go ...". Following due notice and opportunity to appear with representation and witnesses, the foregoing facts were developed at a hearing and investigation held November 22, 1985. From that hearing record Carrier determined that Claimant was guilty of insubordination and unauthorized absences from work and assessed the penalty of discharge. Claimant and the Organization appealed on grounds that the Foreman condoned his refusal to work on the bridge and also was derelict in not helping Claimant obtain proper permission for his absences and early quit.

We have reviewed the record evidence and find that Claimant's culpability for insubordination and unauthorized absences may not be properly transferred to his Foreman. The employee is under an obligation to obey properly communicated reasonable instructions of a duly authorized Supervisor acting within the scope of his authority, even though the employee might believe that the instructions violate his Agreement rights. The fact that a Supervisor does not choose to provoke an immediate confrontation over an employee's refusal to obey does not amount to condonation. Nor is there any persuasive showing that the Foreman misled Claimant to his detriment. By his own admissions, Claimant understood that he had not received authorization to be absent but decided to take the time off anyway.

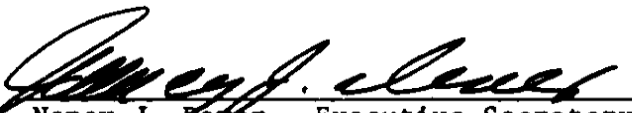
The proven offenses committed by Claimant are serious breaches of conduct. Leniency in such cases is a prerogative of management. We have no legitimate basis in this record to reverse the disciplinary penalty imposed.

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 April 1989.