

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Soo Line Railroad Company

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

(1) The dismissal of J. M. Strong for alleged 'violation of rules 11(a) and 11(c)' was without just and sufficient cause, arbitrary and on the basis of unproven charges (System File D212 #1627S/800-16-B-69).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his 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 were given due notice of hearing thereon.

Claimant began working for the Carrier in 1977, and by the time of his discharge in October, 1984, held seniority as a Section Laborer. Some months prior to his dismissal from service, Claimant had been incarcerated at the Waupun Correctional Institution. In September, 1984, Claimant was on a work release program from the Institution. He worked all day on September 19 and for five hours on September 20 when he was removed from the property by corrections officers. On October 29, 1984, the Carrier dismissed Claimant from service for failure to submit a written request for a leave of absence for the time period after September 20, 1984, pursuant to Schedule Rules 11(a) and 11(c) which provide:

"(a) Except in case of accident or illness, an employee who desires to remain away from service must secure permission from his superior officer.

(c) All requests for leave of absence in excess of 5 working days must be made in writing. This also applies to extension of leave of absence. If granted, proper authority will be furnished in writing."

After several postponements by mutual agreement of the parties, the Carrier convened a Hearing on June 13, 1985, in response to the Organization's request for same on Claimant's behalf. Claimant was advised on June 17, 1985, that based on the facts developed at the Hearing his dismissal from service was upheld.

The Organization essentially contends that the reason Claimant did not return to work in September, 1984, was because he was physically incapable of performing all the requirements of his job as required due to a work-related back and pelvis injury he had sustained in July, 1983. Therefore, Claimant's absence was the result of an illness and under the exception contained in Rule 11(a) of the Schedule Agreement Claimant did not have to secure permission from his superior officer for remaining away from service.

Turning to the evidence developed at the Hearing, the Board concludes that the Carrier sufficiently established that Claimant was removed from the property by officers of the Waupun Correctional Institution on September 20, 1984, because he had violated a requirement of the work release program. It is notable that the Carrier's determination was partly based on Claimant's testimony which indicated that this was, in fact, the reason he left the property on September 20, 1984, although his statements suggest he was not precisely knowledgeable about what his infraction at the Institution entailed. Based on this evidence and a review of the overall record the Board concludes that a sufficient basis exists to substantiate the Carrier's determination that Claimant had violated Rules 11(a) and 11(c) since it established that the root cause of Claimant's absence on September 20, 1984, and thereafter was his incarceration and not his physical illness.

In choosing to discipline Claimant by dismissing him, the Carrier also considered his prior record. During Claimant's tenure with the Carrier he was assessed four suspensions, in increasing degrees of severity, for violations similar in nature to the one now at issue. Based on the charge against Claimant as substantiated at the Hearing, accompanied by Claimant's unsatisfactory past record, the Board finds insufficient reason to conclude that the Carrier's assessment of discipline was arbitrary or unreasonable.

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 20th day of November 1989.