

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

PARTIES TO DISPUTE: (Paul D. Dixon
(Soo Line Railroad Company

STATEMENT OF CLAIM:

"(1) The Dismissal of Trackman Paul D. Dixon for failing to report to work on September 21,22,23,24,25, 1987 was unwarranted and without just and sufficient cause.

(2) The claimant's personal record shall be cleared of the charges leveled against him, he 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.

In a letter dated July 20, 1987, Claimant was informed by Carrier as follows:

"Reference is made to my letter of December 8, 1986, wherein you were advised of your failure to protect your assignment while working on Extra Gang X-29 and your failure to notify your supervisor of your absence on December 3, 1986. You were advised that any further failure to notify your supervisor of your absence and/or absenting yourself from duty without proper authority would result in disciplinary action.

On July 16, 1987, you again absented yourself from duty without proper authority and failed to notify your supervisor of your absence. Further, on July 16, 1987, you were arrested on Company property with a firearm in your possession.

Therefore, this is to advise that as a result of your failure to protect you (sic) assignment, and your failure to notify your supervisor of your absence, and your possession of a firearm on Company property and for possible conduct unbecoming an employee, which involved your arrest on Company property at Lanark, Illinois on July 16, 1987, you are hereby assessed a sixty (60) day actual suspension from service, effective immediately. You should, therefore, arrange to protect your assignment on September 21, 1987.

In accordance with schedule rules, you are entitled to a hearing, at your request."

The record indicates, without dispute, that Claimant returned to work on September 29, 1987, and was told that he could not report since he had forfeited his seniority in accordance with the provisions of Rule 17(e). Rule 17 provides:

"(a) An employe may be granted a leave of absence but in no case for a period longer than six (6) months in any twelve (12) consecutive month period except by written permission of the Superintendent and the General Chairman. Seniority will not be affected when absent from the service by reason of serving on committees, personal injury, sickness of an employe or his immediate family.

(b) An employe covered by this agreement who is promoted to an official position (not subject to the terms of a collective bargaining agreement with another Organization) by the Railroad Company or employed as a salaried officer by the Brotherhood of Maintenance of Way Employes, or any other position by the Brotherhood, will retain his seniority service rights and his name will be continued on the seniority roster. In event of failure to satisfactorily fill the position or a desire to return to the service from which promoted, he may do so provided he meets the physical requirements of the service.

(c) In returning to the service from a leave of absence, an employee may return to the position he occupied at the time granted a leave of absence unless that position is not in existence or is then regularly assigned to a seniority employee, in which event he will then exercise his seniority to displace a junior employee in the same class, or lower class, in which he holds seniority. All employees affected by his return will do likewise.

* * *

(e) An employee accepting a leave of absence other than as specified in preceding sections (a), (b) and (c) will forfeit all seniority rights."

Claimant maintains that he had circled the wrong date on his calendar which accounted for the tardy return to work. He believes that he should not have been terminated for this reason. Carrier asserts that the action taken was not disciplinary in nature but merely the self-executing rule being applied.

Claimant asked for and was accorded an Unjust Treatment Hearing. In the course of that Hearing and subsequent appellate proceedings, the Organization attempted to shift the burden to Carrier in that it was argued that Carrier should have contacted Claimant in an effort to ascertain why he had not reported to work as ordered in the July 20, 1987, letter. Carrier responded that it was not under any obligation to make any contact with Claimant after the letter of July 20.

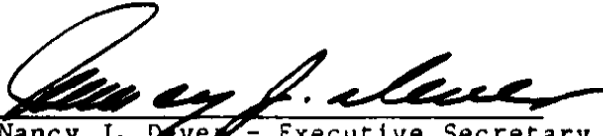
The Board has examined the entire record of this matter and finds that Claimant was afforded a fair Hearing. Further there is no dispute on the facts. It is clear that Claimant did not report to work as ordered by Carrier's letter of July 20, 1987, nor did he request a leave of absence. Carrier's actions were in accordance with provisions of the Rules and cannot be overturned.

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 28th day of February 1991.