

The Third Division consisted of the regular members and in addition Referee Thomas J. DiLauro when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Davenport, Rock Island and Northwestern Railway Company

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

(1) The dismissal of Claimant G. L. Gladfelter for his alleged '... failure to properly protect your assignment on August 13, 14 and 15, 1990, when you absented yourself from your position without authority by not reporting to work.' was arbitrary, capricious, excessive and based on unproven charges (System File C-90-D970-1).

(2) Claimant Gladfelter shall be reinstated, his record cleared of the charges leveled against him and he shall be compensated for all time lost."

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.

Prior to his dismissal, the Claimant had over fifteen years of satisfactory service with the Carrier. The Claimant worked as a Machine Operator and Laborer, and was headquartered at Bettendorf, Iowa.

Around August 10, 1990, the Claimant began experiencing severe personal problems at home, because his wife asked him for a divorce. The Claimant was treated as an outpatient for depressive disorder with psychotherapy and medication. The Claimant neither reported for work nor notified the Carrier of any reason for his absence on August 13 or 14, 1990.

On August 15, 1990, at approximately 6:45 A.M., the Claimant called the Carrier and requested a leave of absence from the Assistant General Manager who informed the Claimant it was too late for a leave of absence, but to call back at noon. The Claimant called at noon, and the Assistant General Manager informed him that he was being withheld from service pending an Investigation.

By letter dated August 15, 1990, the Carrier notified the Claimant to attend an Investigation to determine his responsibility in failing to protect his assignment on August 13, 14, and 15, 1990. As a result of the Investigation, the Carrier determined the Claimant was guilty of violating Rule 604 of the General Code of Operating Rules, and dismissed him from service.

The Organization argues the Claimant's absences from work were for just and sufficient cause because he suffered from depressive disorder brought on by severe family problems. The Organization notes this Board has consistently held illness is a justifiable reason to be absent from work. (Second Division Awards 7754 and 8657; Third Division Award 19589). The Claimant provided documentation that he was under medical care.

The Carrier argues violation of Rule 604 is a serious infraction, and the Carrier uniformly holds employees out of service pending Investigations. Further, the Claimant admitted he was aware of the penalty for failing to properly protect his assignment. Although the Claimant availed himself of the Employee Assistance Program in the past, he did not request assistance in this case.

The Organization contends the Carrier violated the Claimant's right to a fair and impartial Investigation as contemplated by Rule 36 of the Agreement. The Claimant was prejudged to be guilty of the charges leveled against him by the Assistant General Manager when he telephoned the Carrier on August 15, 1990. (First Division Award 20335; Third Division Award 4634; Fourth Division Award 1588). The Claimant was denied an avenue of appeal when the Assistant General Manager issued the decision to dismiss him because she denied the Claimant's request for a leave of absence, and she was designated as the officer for the first level of appeal. (Third Division Awards 17156, 23427). The Carrier violated the Claimant's right to a fair and impartial Investigation when it failed and refused to allow the Claimant the right to question witnesses present at the Hearing on August 30, 1990. (First Division Award 5197; Third Division Award 12090; Fourth Division Award 2270).

The Carrier responded the Claimant was working on a "last chance" basis. However, the Claimant failed to report for work or correctly request permission to absent himself from work.

With respect to the substantive charge, this Board finds that there is sufficient probative evidence in the record to establish that the Claimant is guilty of the charge against him. The precedent cited by the Organization can be distinguished. For example, the Organization cites Third Division Award 23555 which held:

"Claimant properly reported off sick...Claimant was sick; she reported off in the proper manner...."

However, in this case, the Claimant failed to properly report off sick, and the circumstances surrounding this failure were not so extreme as to prevent him from telephoning the Carrier.

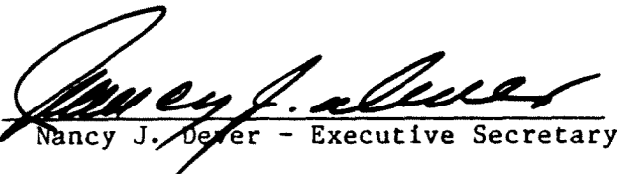
With respect to the disciplinary action, the Board will not set aside discipline imposed by a Carrier unless it is unreasonable, arbitrary, or capricious. Third Division Award 26160. Here, the Claimant was working on a last chance basis, and the Carrier demonstrated even-handed application of Rule 602. Therefore, dismissal was the appropriate level of discipline 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 21st day of October 1992.