

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29492
Docket No. SG-29615
93-3-91-3-60

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Southern Railway Systems

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Systems (SOU):

(1) Claim on behalf of E. Grey, Jr., for payment of thirty (30) days pay at his pro-rata rate of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 23, when it did not find him guilty and assessed him with excessive discipline." Carrier file SG-LEXN-90-2. G.C. File SR-3690A. BRS Case No. 8200-SOU.

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 employees involved in this dispute are respectively carrier and employees 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 therein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant was advised to report for a formal investigation to determine his responsibility, if any, in connection with alleged failure to protect his assignment as floating Signalman of January 15-29 and February 1, 1990. As a result of the investigation the Claimant was advised that he had been found guilty as charged. He was assessed a thirty (30) day suspension. The discipline was appealed on property by the Claimant's Organization up to and including the highest Carrier officer designated to hear such. Absent resolution of the party's differences on this matter it is now before this Board for final adjudication.

According to the Signal Supervisor the Claimant called on January 8, 1990, to mark off with a vacation day because of problems related to his son. The Supervisor testified at the investigation that he understood that the Claimant would be off only that day. On January 9, 1990, the Claimant was off. The Claimant's sister-in-law then called the Supervisor with request, according to understanding by the latter, that the Claimant wished to be marked off the whole week of January 8th for vacation because of family problems. He was marked off accordingly. According to testimony by the Supervisor the following then transpired:

"January 15, Monday through Thursday, January 18 (the Claimant) was off and I didn't receive a call. The following week, January 22 through January 25, 1990 (the Claimant) was off and I didn't receive a call. Monday, January 29th (the Claimant) was off and I didn't receive a call."

At that point, according to the Supervisor, initiatives were taken to contact the Claimant and the Supervisor did talk with him on January 29, 1990. On that day the Claimant told the Supervisor that he thought his sister-in-law had informed Carrier's supervisors that he would be off indefinitely until the problems he had were resolved. According to testimony by the Supervisor:

"That brings us to Tuesday, January 30. (The Claimant) called me and said he needed to be off account of other personal reasons and they would probably take Wednesday too before they were resolved. I told him okay that he had those days covered. So Wednesday, he was in fact off and as far as I was concerned that day was covered. Thursday, February 1 (the Claimant) was off and there was no call. Monday, February 5 (the Claimant) was off and I was informed that (the Claimant had called) and that he might be in the afternoon. Tuesday, February 6 (the Claimant) did...report to work 30 minutes late..."

The above facts, corroborated by both the General Signal Supervisor, and the Claimant himself, are not in dispute with the exception of whether the sister-in-law called in on January 9, or 10, 1990, and what the message was that she actually conveyed to supervision. Supervision remembers that she called on January 10. She, in a written statement which is part of the record, and the Claimant in testimony, state that it was on January 9.

Irrespective of which day this happened, such does not materially change the main outlines of the record on this case since the Claimant was given the whole week of January 8, 1990, off anyway as a vacation week. What is in dispute is whether the Carrier's officers knew, from January 9 or 10, 1990, onwards whether the Claimant would be off until, ultimately, February 6, 1990 and whether the Claimant had conveyed this information to management in an unambiguous manner. The Claimant argues variously that his sister-in-law informed management of his intentions; that his father had also made a call, and that a notarized letter introduced into the record which was written by his sister-in-law all prove that he had wished to take the time that he is being accused of being off without permission, as vacation time. The Claimant also intimates that it is his belief that supervision was indifferent to the duress he was suffering during the time he was off.

With respect to allegations and arguments, the record shows the following. The statement by the Claimant's sister-in-law confirms the Carrier's and not the Claimant's version of the facts. She does not state that she had asked for three weeks vacation after January 9, 1990, but she only says, in this statement, that the "...Purpose of call was to inform (supervision) that (the Claimant) needed vacation time to try and resolve problems that had occurred involving his son...". Thus supervision did not know that the Claimant was to be off beyond the first week after January 8, 1990. It is a basic responsibility of all employees to follow rules of clear communication when availing themselves of privileges under the Agreement. The record supports, by testimony of supervision, and by Claimant's own evidence, that the Claimant had not clearly communicated to the Carrier his intentions about his vacation. Nor is conclusion that Carrier's officers were indifferent to Claimant's personal problems warranted from the evidence before the Board. The Supervisor did state at the investigation that he did not feel comfortable discussing the Claimant's personal problems, but the record does not support that he was indifferent to them. In fact, he gave the Claimant vacation time unhesitatingly for the week of January 8, 1990, because the Claimant's sister-in-law had informed supervision about these problems. Nowhere in the record, however, is there sufficient evidence to permit conclusion that the Claimant's problems were so overwhelming that he could not have taken proper measures himself to have informed management of his intention, instead of relying on intermediaries. Given information available to it in this case the Carrier acted both reasonably and properly. The Board has no grounds for disturbing the Carrier's determination in this matter and it must rule accordingly. The Agreement was not violated.

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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 January 1993.