

PUBLIC LAW BOARD NO. 2142

Award No. 21

Docket No. 1159

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Illinois Central Gulf Railroad

Statement

of Claim: The Carrier violated the Agreement when it arbitrarily removed Mr. A. Smith from service. Claimant A. Smith be restored to service with all rights unimpaired and paid for all time lost beginning on August 4, 1977.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated January 23, 1978, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant Trackman was scheduled to work but he failed to report for duty on July 25, 26, 27, 28, 29, August 1, and 2, 1977. During such period, Claimant made no attempt to contact his Foreman or any Supervisor to request permission to be absent from work on the dates in question.

Under date of August 2, 1977 the Division Engineer advised Claimant:

"This letter is to inform you that you are in violation of Rule 39.

Rule 39 reads:

'An employee who is absent from his assigned position without permission for 7 consecutive work days will be considered as having abandoned his position and resigned from service.'

Please turn in any Company property issued to you to your Foreman."

The Employees questioned the fact that the Track Supervisor had written the Division Engineer, on August 2, 1977, advising that Claimant had been absent seven days and that said act of sending the letter on the seventh day of Claimant's absence indicated that Carrier had

prejudged and that it was prejudiced to Claimant. The Employees alleged that Claimant had been ill and that two fellow employees had so reported this alleged fact to Claimant's Foreman.

The Board finds that while the appearance of the situation may give form to such an allegation, the facts do not provide substance thereto. Our Board held in its Award No. 9 that:

"The obligation to notify Carrier or to request permission to be off is personal. It is not transferable. Even if one were to accept this excuse, the failure of the method of communication utilized to work rest solely with Claimant."

Carrier Representatives denied information as to Claimant's alleged illness from fellow employees. The medical evidence offered stated:

"Patient states he was sick for four days before July 29th.
Remarks: URI."

It is noted that such alleged illness could not deter Claimant from complying with Rule 39 by contacting the Carrier as to his being absent. We find that the medical evidence offered by Claimant neither supported nor proved that Claimant had been thereby prevented from contacting his supervisor as to his absence.

This Board also pointed out in its Award No. 3:

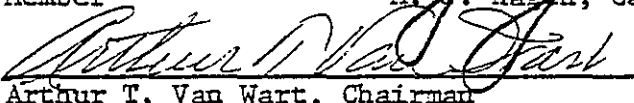
"One fundamental rule governing the conduct of an Employee is that he must report for work at the time and place designated by his employer. Inherent in such a rule is the corollary obligation to request permission to be absent when the employee is not able to report to work or to report to work on time."

Here, it has been successfully demonstrated that Claimant, who had a poor work record, failed to comply with Rule 39 and, in such circumstances, we are impelled to find that the Carrier's position herein should prevail.

Award: Claim denied.


J. F. Paloni, Employee Member


M. J. Hagen, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member