

PUBLIC LAW BOARD NO. 2142

Award No. 23

Docket No. 1173

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

Statement

of Claim: The dismissal of Trackman Claude Mimes was without just and sufficient cause and wholly disproportionate with alleged charges. Claimant Claude Mimes shall be compensated for all time lost, and shall have all his seniority rights and other rights returned unimpaired.

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 was requested, under date of July 1, 1977, to attend a formal investigation, on July 8, 1977, to determine his responsibility, if any, in connection with the following charges: (1) whether or not he was absent without authority from his duties as section laborer on gang No. 41 headquartered at Swan Lake, Mississippi, on June 20, 1977, to July 1, 1977; (2) whether or not he violated the terms of his probation which was assessed following a conviction on March 31, 1975 for assault to commit voluntary manslaughter and (3) whether or not he was charged with burglary and possession of burglary tools and trial for which had been set for July 12, 1977, in Shelby County, Tennessee.

The investigation was postponed twice at the request of the Employees and, in the interim, the Carrier added an additional charge whether or not Claimant made unauthorized use of railroad credit at the Irving Hotel, Greenwood, Mississippi, on June 1, 2, 3, 7, 8, 9, 10, 13, 14, 15, and 16, 1977 while assigned to maintenance of way gang No. 41 headquartered at Swan Lake, Mississippi.

The investigation was finally held on October 17, 1977. In the meantime, on October 4, 1977, the charge of possession of burglary tools and intent to burglarize were dropped by the Shelby County Grand Jury as a result of the lack of prosecution.

Mr. Mimes was sent a letter, dated October 26, 1977, advising that he had been found guilty of the charges placed against him and that these acts were a violation of Maintenance of Way Rules K, P, U, and Rule 39 of the Schedule Agreement. Rule 39, which is Rule 38 in the current agreement, reads as follows:

"An employee who is absent from his assigned position without permission for seven (7) consecutive days, will be considered as having abandoned his position and resigned from service."

The Board finds that Claimant was given a fair and impartial hearing.

There was sufficient evidence adduced to fully substantiate the hearing officers conclusions of guilt. There is no question but that Claimant was absent without proper authority from his assignment beginning June 20, 1977. Nor is there any question as to Claimant's misuse of credit at the Irving Hotel in June 1977. The Board also finds that at no time did Claimant request or receive permission to be absent on June 20 or thereafter.

In the circumstances, we find that the discipline was not unreasonable. This Board previously 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."

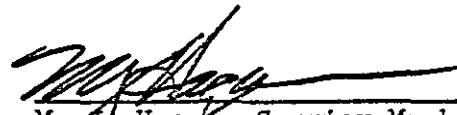
Here, we find the circumstances were not such as to excuse that responsibility. It also was pointed out, in Second Division Awards No. 4689 and 6606 (Yogoda):


"The Claimant has placed himself in a position of being absent from service, but not unavoidably. He should be cognizant of and liable for the consequence of violating the law. This conscious violation of the law does not constitute an unavoidable absence of good reason; violation of the law are presumed avoidable."

In the circumstances, the instant claim will be denied.

Award: Claim denied.


J. P. Paloni, Employee Member


M. J. Hagan, Carrier Member.


Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Falmouth, Massachusetts, September 26, 1979.