

AWARD NO. 8

CASE NO. 17

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Assistant Foreman G. A. Belle for alleged unauthorized absence was without just and sufficient cause, unwarranted and excessive (System File 4A-1245).

(2) Assistant Foreman G. A. Belle shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

OPINION OF BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the employees and the Carrier involved in this dispute are respectively employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute involved herein.

At the time of dismissal, the Claimant was employed as an Assistant Foreman. His assigned hours were 7:00 a.m. to 3:30 p.m. On September 11, 1980, the Carrier directed the Claimant to appear at an investigation on the following charge:

"Your responsibility in connection with absenting yourself from your work assignment without authority on September 4, 1980 and reporting late for your work assignment without authority on September 5, 1980, in violation of Rule 14 of the General Regulations and Safety Rules effective June 1, 1967."

Rule 14 states:

"Employees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties with or substitute others in their place, without proper authority."

As a result of the investigation the Claimant was dismissed.

The investigation, in the opinion of the Board, establishes by way of substantial evidence that the Claimant violated Rule 14. It is clear that the Claimant did not report or have permission to be absent from work on September 4 or tardy on September 5. The Organization argues that because Mr. Belle called and notified the Carrier of his predicament each day that he did comply with Rule 14. Although the Claimant did call to notify the Carrier of his absence, there is no evidence that he was granted permission to be tardy or absent. Further, it is generally accepted that mere notification of an absence or tardiness doesn't imply permission under a rule such as Rule 14.

Regarding whether the penalty of dismissal is appropriate, the Board recognizes that on its face and standing alone the charge is not serious enough to justify dismissal. However, when considered in conjunction with the Claimant's past record, the Board considers a severe penalty appropriate, although in this case something less than permanent dismissal may serve the interest of all concerned. Due to the nature of the circumstances surrounding his absence and tardiness, we are inclined to give the Claimant one last chance to prove himself a model employee. Perhaps the lengthy suspension he

has served will have meaningfully impressed on him the need for regularity in his work habits. Hopefully, also as a result, the Carrier will now have a reliable and productive employee. If not, further transgressions of his employment responsibilities by the Claimant will be taken as evidence in the future that permanent dismissal is appropriate.

AWARD

The Claimant is to be reinstated with seniority and all rights unimpaired but without pay for time lost within thirty days.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Date: _____

Oct 26, 1981