

PUBLIC LAW BOARD NO. 1844

AWARD NO. 77

CASE NO. 92

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 Night Gang Foreman Lester P. Allen was without just and sufficient cause, excessive, discriminatory and wholly disproportionate to the alleged offense. (System File 4D-107 D-11-3-291).
- (2) Night Gang Foreman Allen be allowed to return to his former position with all rights unimpaired and compensated for all lost time.

OPINION OF BOARD:

At the time of his dismissal, Claimant was employed by Carrier as a Track Foreman. On January 23, 1979 Claimant requested and was granted a leave of absence for medical reasons until March 23, 1979. Sometime prior to March 23, 1979, Claimant's wife inquired of Assistant Roadmaster Gigear regarding extension of the leave of absence. Mr. Gigear advised Claimant's wife that Carrier could not approve such an extension without a note from Claimant's private physician indicating the diagnosis, prognosis, and the expected date Claimant would be able to return to work. It is unrefuted on the record that no such physician's report was subsequently forthcoming.

Claimant failed to report for work on Monday, March 26, 1979, and did not contact his supervisor until Monday, April 9, 1979. On April 11, 1979 Claimant reported for work. By notice also dated April 11, 1979 Claimant was directed to attend a formal investigation on April 16, 1979 to determine

Your responsibility in connection with absenting yourself from your work assignment without authority on March 26 thru April 10, 1979 in violation of Rule 14 of the General Regulations and Safety Rules effective June 1, 1967.

Hearing was postponed one week and took place April 23, 1979. Subsequent to the investigation Claimant was dismissed from service.

Rule #14 of the General Regulations and Safety Rules reads as follows:

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.

Of relevance also to the present case is "Rule 54 - Leave of Absence" which reads in pertinent part:

An employee who fails to report for duty at the expiration of leave of absence will be considered out of service.

It is undisputed on the record that Claimant requested and received a properly authorized leave of absence from January 23, 1979 through March 23, 1979. We find no support for the organization's argument that Claimant had no knowledge of when his leave actually expired. The Organization and Claimant's protest that Claimant failed to receive a completed copy of his leave authorization and therefore had no knowledge of its expiration date. Claimant's own testimony on the record, however, indicates that he sent his wife to obtain an extension and underwent an "upper G.I." test based on what was obviously full knowledge that his leave of absence expired on March 23, 1979. To add to this

initial strain on Claimant's credibility, he initially testified that his failure to report for work March 26, 1979 was due to his being "still under the influence of a barbiturate" and that he "was not released from that drug until April 2." Later in the record Claimant testifies that he was in jail until April 3 and was released from the barbiturate on April 9.

It is apparent, therefore, that the reason for Claimant's failure to report for work on March 26, 1979 was his incarceration up to and including April 3, 1979. Claimant's failure to report caused the activation of the self-operating forfeiture in Rule 54. It is well established that arrest or incarceration can not excuse an employee's failure to protect his assignment. Awards 3-22383 and 3-22451.

AWARD

Claim denied.


Dana E. Eischen, Chairman


~~H. G. Harper~~, Employee Member


~~J. D. Crawford~~, Carrier Member

Date: April 2, 1981