

PUBLIC LAW BOARD NO. 1997

Parties: Brotherhood of Maintenance of Way Employees
and
Union Pacific Railroad Company

Statement of Claim: "1. That the Carrier violated the Agreement between the Carrier and the Brotherhood of Maintenance of Way Employees when on December 19, 1973 they dismissed B&B Helper S. W. Parsons III without just and sufficient cause and on the basis of unproven charges.

2. That the Carrier shall compensate Claimant S. W. Parsons III for all time lost during the period December 19, 1973 to and including July 1, 1974 account their improper and arbitrary action."

Discussion: Claimant had a seniority date of August 6, 1973. He entered service at Ogden, was furloughed, and on October 29, 1973 transferred to Salt Lake City as a B&B Helper and worked on the construction of the Carrier's new Diesel Shop until his removal from service on December 19, 1973 for alleged violation of Rule 702 which states:

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

The operative facts surrounding this claim are that the Claimant did not report for work on Friday, December 14, 1973. His father called the Clerk in the B&B Office to state that his son was too ill to report for work. This information was given to the Clerk in the Project Engineer's Office. The next day, December 15, 1973, the Claimant went skiing at Ogden and twisted his right knee. He was treated that day, December 15th, at the McKay-Bee Hospital for an acute sprain of the right knee. The following, December 16, 1973 was a rest day for the Claimant.

On Monday, December 17, 1973, the Claimant called the Office of the Project Engineer Mr. Monson, and spoke to his clerk and allegedly told the clerk that he had injured himself in a skiing accident and that he had a doctor's appointment for 3:00 P.M. that day, and would report later that day.

The Claimant's version is that he called the clerk and told him that he had a doctor's appointment at 3:00 P.M. and that he would find out when he could return to work. The Claimant stated that the clerk told him that he would have to file an accident report and the Claimant purportedly replied that he would come to the office after he had seen the doctor at 3:00 P.M. The Claimant testified that when he went to the doctor's office at 3:00 P.M. the doctor was not in because he was sick and that his appointment was rescheduled for 3:00 P.M. the next day. The Claimant further testified that he saw the doctor the next day as scheduled who gave him a release to go back to work which he did on Wednesday, December 19, 1973. When the Claimant reported for duty on December 19th he was informed orally that he had

been removed from service. On December 20, 1973, the Claimant was notified in writing that he had been removed from service for violation of Rule 702.

The Claimant filed a claim protesting the Carrier's disciplinary action. On June 30, 1974, the Carrier's Chief Engineer offered to restore the Claimant to service on a leniency basis without prejudice to his right to file a claim for all time lost. The Claimant returned to work on July 2, 1974 and then proffered the instant claim.

Carrier's Position

The Carrier stated prefatorily that it was beset with absenteeism among the employees of the B&B Gang at Salt Lake City. It noted that the Claimant had been absent eight out of thirty days between October 29 and December 19, 1973. On December 10, 1973, the General Foreman met with all the employees of the B&B Gang in Salt Lake City to discuss the acute problem of absenteeism. The Carrier stressed that on the fourth day after this meeting the Claimant called in stating that he had the flu and he was not able to come to work. Nevertheless, the Claimant recovered sufficiently the next day to go skiing and in the course of this sprained his right knee.

On the next work day, December 17th, the Claimant should have notified the Carrier by 8:00 A.M. that he was unable to report for work. However, he testified that he thought he reported before 10:30 A.M. The Carrier stated its records show that the

Claimant called in at 10:30 A.M. When the clerk told the Claimant that he would have to file an accident report, the Claimant replied that he would report later that day and fill out the said report at that time.

The Carrier stated that its understanding of the conversation was that the Claimant stated he would report for work at 12:30 P.M. The Carrier added that on December 17, the Claimant neither reported for work nor filed any accident report. The Carrier added that if the Claimant was not able to see the doctor as he alleged, then it was his responsibility to inform his supervisor that he would not be able to report for duty on Tuesday, December 18th. The Claimant failed to do this. This was another flagrant violation of Rule 702 and evidence of the Claimant's failure to reduce or eliminate absenteeism which was a big problem. The Carrier emphasized that the Claimant violated Rule 702 twice just a week after he had participated in a meeting called by his supervisors to combat this problem. The Claimant apparently was not impressed with the Carrier's efforts to cope with this problem and he continued to flout the relevant rules, and thus subjected himself to disciplinary action.

The Carrier stressed that it chose to rely on the credibility of its supervisors, i.e., the Project Engineer and the General B&B Foreman rather than the conflicting and confusing testimony of the Claimant. The Claimant has demonstrated during his short tenure a total lack of responsibility and reliability toward meeting his assignment. It was proper to dismiss the Claimant. He was permitted to reenter service on a leniency basis to afford him an opportunity

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to demonstrate that he could be a dependable employee. No valid purpose would be served by rendering a monetary award.

Organization's Position

The Organization asserted that the Carrier assessed a heavy disciplinary sanction on evidence which was both hearsay and speculative. The Project Engineer had no conversation with the Claimant, but relied on what his clerk told him. He dismissed the Claimant on the basis of hearsay rather than on facts of his own knowledge. The General Foreman called for the Claimant's dismissal on conjecture and speculation about the Claimant's absence, and had no contact with or knowledge of the Claimant after he left work on the evening of December 13, 1973. He based his reasons for dismissing the Claimant on pure speculation without knowing whether the Claimant had valid reasons for being absent from work.

The Organization did not make even a cursory investigation as to the reasons why the Claimant was absent from work on December 14 because of the flu and on December 17 and 18, 1973. Had it done so, it would have discovered that the Claimant came down with the flu on the night of Thursday, December 13 and Friday, December 14, and was not able to report for duty on December 14. It is not unusual for a person to recover quickly from attacks of the "24 hour" flu and be able to function normally the next day. Moreover, the Organization stressed that the Claimant obtained a doctor's certificate for his absence on Friday, December 14, 1973 and there is

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no valid basis for the Carrier to question or discipline the Claimant for that absence.

With regard to the Claimant's absence on Monday, December 17 and 18, 1973, the Claimant explained the reasons therefor. The Claimant called his supervisor as soon as he was able on December 17. He informed the supervisor's clerk that he would find out from the doctor when he could return to work. In view of the fact that the Claimant was not able to see the doctor at 3:00 P.M. on December 17, he was not able to inform the Carrier when he would be able to return to work. As soon as the Claimant received a release from the doctor in the afternoon of December 18th, he returned to work on December 19th.

The Organization denied that the Claimant informed the supervisor's clerk that he would report to the office on the afternoon of December 17.

The Organization also stated that the Claimant explained at the Investigation the reasons for his absences of eight days between October 29 to December 19, 1973. The Claimant asserted that one day involved a court appearance, two days were for illness, and the other days involved days of very bad weather in Ogden when the foreman told the employees, including the Claimant, that they would not be required to work if they were not prepared for the bad weather. The Claimant stated he worked in a big snow storm with rubber boots that had holes in the bottom and his feet were soaked and he went home that day. The Organization further stressed that the Claimant was charged only for his absences of December 17 and 18, 1973 and the

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Carrier had no right to interject any other absences into these proceedings. As for the Claimant's conduct on December 17 and 18, the Claimant has explained his actions reasonably and properly. Since the only part of Rule 702 that the Claimant was charged with violating was absenting himself from duty without proper authority, the Organization stated the evidence does not support that charge, and the assessed discipline should be vacated and the Claimant made whole for all the wages and benefits he lost from the time he was taken out of service until he was restored to duty.

Findings: The Board, upon the whole record and all the evidence, finds that the employee and Carrier are Employee and Carrier within the meaning of the Railway Labor Act; that the Board has jurisdiction over the dispute and that the parties to the dispute were given due notice of the hearing thereon.

The Board finds that the evidence shows that there were at least technical violations on December 17 and 18, 1973. On December 17, 1973, the Claimant had the duty to notify the Carrier that he would not report for duty that day prior to the starting time of his shift. This the Claimant did not do. The Carrier further stated that its evidence indicated that the Claimant stated he would report for duty on December 17, at 12:30 P.M., which he did not do. The Board is unable to resolve the conflict in the testimony but it is evident that the Claimant had an obligation to let the Carrier know during the day of December 17 what was his status regarding his return to work with some degree of specificity which he failed to do.

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Futhermore, he gave the Carrier no notice at all of his status on December 18, not reporting to it in any way or manner.

The Board finds the Claimant's conduct was cavalier in meeting his responsibilities toward the Carrier. Within a few days after a Carrier convened meeting to discuss absenteeism, the Claimant became too ill to report for work, but nevertheless able to go skiing the next day. While it is true that the Carrier technically charged the Claimant with his conduct only on December 17 and 18, 1973, it was in fact examining the totality of his attendance record - which was something less than praiseworthy. The Carrier decided it did not want the Claimant to remain in its employ, because in the relatively short time he had been employed, he did not appear to be a responsible and dependable employee.

While the Board understands the Carrier's wish not to continue in its employ a short term employee who does not appear to be responsible, nevertheless, the Carrier must promptly put the employee on notice that his conduct is not permissible, and in this case, the Carrier failed to do this. During the period that the Claimant was absent eight times out of a period of approximately 30 days, there is no evidence that the Carrier issued no specific notices or warnings to the Claimant other than the general meeting on December 10. It is not appropriate for the Carrier to assess the severe sanction of dismissal for technical violations - for that is what the Claimant committed on December 17 and 18, 1973.

When the total record is weighed the Board finds that the Claimant is not entitled to be completely exculpated for his

actions in this case, because the record reveals conduct something less than exemplary. The Claimant has demonstrated something less than zealous attention to regular attendance and should be disciplined for his less than regular and consistent attendance at his job. On the other hand, the Board finds that a suspension from December 19, 1973 until July 2, 1974 is too severe a sanction under the facts of this particular case. Therefore the Board directs the Carrier to convert the six month suspension into a four month suspension. The Carrier also has an obligation to act diligently in informing employees of their delinquencies, and to apply discipline progressively.

The Board also puts the Claimant, by this Award, on notice that any untoward departure from, or variance in, a regular attendance record will not be tolerated, and may result in his dismissal which the Board expects the Organization to accept and not to appeal. The Board further directs a copy of this Award to be made part of the Claimant's personnel file.

Award: Grievance disposed of in accordance with the Findings.

Order: The Carrier is directed to comply with the Award, on or before March 6, 1978.

Jacob Seidenberg
Jacob Seidenberg, Chairman and Neutral Member of Board

E. R. Myers
E. R. Myers, Carrier Member

S. E. Fleming
S. E. Fleming, Employee Member

February 5, 1978