

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5905

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	)	
	)	Case No. 5
and	)	
	)	Award No. 5
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY	)	

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
D. M. Gevaudan, Carrier Member

Hearing Date: June 25, 1998

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The fifteen (15) demerits* assessed Trackman B. Stanfield for his alleged unauthorized absence from his position for four (4) hours on May 22, 1998 was without just and sufficient cause, capricious and excessive punishment (System File SAC-10-98/UM-9-98).
2. Trackman B. Stanfield shall now be reinstated to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

* Note: The 15 demerits resulted in an accumulation of 100 demerits which resulted in Claimant's dismissal from service.

FINDINGS:

Public Law Board No. 5905, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On May 22, 1998, Claimant reported for duty. He desired to leave work early. He went to his supervisor's office to request permission to leave at noon, but the supervisor was not in the office. He left at noon anyway.

On June 12, 1998, Claimant was notified to report for an investigation on June 18, 1998, concerning his alleged violation of General Rule 1.22 by leaving work early without authorization. The hearing was postponed to and held on June 30, 1998. On July 9, 1998, Claimant was advised that he had been found guilty of the charge and assessed fifteen demerits. This brought his accumulated demerit total to 100, which resulted in his dismissal from service.

The Organization contends that Carrier failed to prove the charge by substantial evidence. The Organization maintains that Claimant made a good faith attempt to obtain authority from his supervisor but the supervisor was not in his office. The Organization further argues that Claimant acted reasonably by approaching his foreman and that the foreman acquiesced in Claimant's desire to leave early. In any event, the Organization urges, the penalty was excessive.

Carrier contends that it is undisputed that Claimant failed to obtain proper authority to leave early. Carrier urges that Claimant demonstrated his knowledge that the appropriate Carrier officer to approach was his supervisor, rather than the foreman. Carrier faults Claimant for not trying to locate his supervisor when the supervisor was not in the office. Carrier further argues that the foreman had no authority to grant Claimant permission to leave early and, in any event, the foreman did not acquiesce in Claimant's leaving early. Carrier maintains that the discipline imposed was not arbitrary, capricious or excessive.

After careful consideration of the record, the Board finds that Carrier proved Claimant's guilt by substantial evidence. Rule 1.22 provides:

Employees must report for duty at the prescribed time and must not absent themselves from duty nor engage a substitute to perform their duty nor change duties without permission from the proper officer.

Claimant understood that the proper officer from whom to seek permission was the supervisor. The fact that the supervisor was not in his office at the time that Claimant sought him out did not relieve Claimant of his responsibility to seek the supervisor's permission to leave early. Claimant made no other attempt to contact the supervisor, such as asking that he be paged or radioed. Under the circumstances, Claimant did not act reasonably in concluding that he could leave early without obtaining the supervisor's permission.

There is no dispute that the foreman was not a proper officer and had no authority to give Claimant permission to leave early. The relevant testimony of the foreman was as follows:

Told me that morning he was going to have to go home. I just brushed it off, no you're not going home. Later on he said that he had some business to do, got to go home. I just threw up my hands like that. But me and him always talk about going home. I just thought maybe that was it.

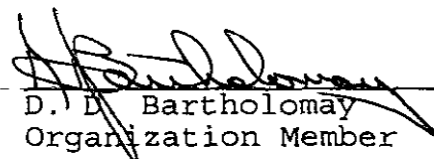
We cannot infer from the foreman's testimony that he acquiesced in the Claimant's leaving early. On the contrary, the foreman expressly told the Claimant that he was "not going home." The foreman's act of throwing up his hands at the Claimant's subsequent request was, at most, ambiguous. Under the circumstances, Claimant could not reasonably have inferred that the foreman had granted him permission to leave early.

AWARD

Claim denied.


Martin H. Malin, Chairman


D. M. Gevaudan
Carrier Member


D. D. Bartholomay
Organization Member

Dated at Chicago, Illinois, September 30, 1999.