

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Burlington Northern and Santa Fe Railway Company
(Former St. Louis - San Francisco Railway Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement on March 28, 2002, when it issued Ms. S. D. White, a Level-1 Formal Reprimand for allegedly being absent from work without proper authority on Wednesday, March 27, 2002.
2. As a consequence of the Carrier's violation referred to in part (1) above, the discipline shall be removed from the Claimant's personal record and she shall be compensated for all wages lost in accordance with the Agreement." [Carrier's File 12-02-0110. Organization's File B-2678-11].

FINDINGS AND OPINION:

Upon the whole record and all the evidence, the Board finds that the Carrier and Employees ("Parties") herein are respectively carrier and employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction over the dispute herein.

The Claimant, Ms. Sheila D. White, was hired by the Carrier in its Maintenance of Way Department on June 23, 1997. She was working as a Maintenance of Way Trackman on a construction gang in Memphis, Tennessee, in March, 2002.

On March 28, 2002, Roadmaster Greg T. Rickard wrote Ms. White a letter, reading in part:

"[Y]ou are issued a Formal Reprimand for violation of Maintenance of Way Operating Rule 1.15, being absent from work without proper authority on Wednesday, March 27, 2002."

The Parties' Agreement permits an employee to be disciplined without an investigation; however, if an investigation is timely requested, it must be afforded, and a precise statement of the charges must be provided in writing. Based on correspondence in the record, the Board presumes that an investigation was requested, although a copy of any such request is missing. An investigation was set for May 7, 2002,

"[F]or the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your failure of being absent from work without proper authority on Wednesday, March 27, 2002."

By agreement of the Parties, the investigation was postponed to, and held on, May 21, 2002. A transcript of testimony given in the investigation, together with evidence in the form of attached exhibits, is before this Board.

On May 30, 2002, the Carrier's Assistant Director Maintenance Production, Mr. Calvin J. Bray, advised the Claimant:

"I have carefully read the transcript from your investigation held on May 21, 2002, and the reprimand letter issued to you by Roadmaster Rickard is hereby sustained."

The Organization appealed Mr. Bray's decision to Springfield Division General Manager F. D. Clifton, who stated that he felt the action taken by Mr. Rickard was correct and proper. He further stated that he found the Claimant in violation of Maintenance of Way Operating Rule (MWOR) 1.15, and Engineering Instruction (E.I.) 22.5. Those prescriptions read as follows:

MWOR 1.15: "Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. Employees must not leave their assignment, exchange duties, or allow others to fill their assignment without proper authority."

E.I. 22.5 (in part) "If for some reason you need to be absent, it will be necessary that you personally contact your Assistant Roadmaster or Foreman to discuss the matter with him. Leaving a voice mail message for the Roadmaster will not be considered contacting the proper authority."

Mr. Clifton's decision was appealed, in turn to the Carrier's highest designated officer, General Director - Labor Relations Dennis J. Merrell, who reaffirmed the decision rendered by Mr. Clifton. The appeal was thereafter progressed to this Board for final disposition.

It is the Organization's position that the rules quoted above are overly vague and arbitrary. There is no dispute that the Claimant was absent from work on March 27, 2002, but the Organization argues that she called Foreman Joseph Mitchell to advise him of her absence, and attempted to notify Roadmaster Rickard, but he did not answer and his voice mail box was full and would not accept her message.

The Organization further argues that MWOR 1.15 does not address the subject of laying off work, and the Claimant complied with E.I. 22.5, captioned "Absence From Duty Procedures." Additionally, the Organization states that Roadmaster Rickard's "personal policy" for laying off duty is exactly opposite that prescribed in E.I. 22.5, and the Claimant should not be penalized for failure to comply with this personal policy.

The Organization also objects that Mr. Rickard's "personal policy" was instituted solely because of the Claimant, and he had never disciplined anyone else for absenteeism before the instant case, suggesting unfair, unequal treatment.

General Manager Clifton responded that the record clearly shows that the Claimant did not report for work and did not call her Foreman, a violation of E.I. 22.5 and MWOR 1.15. He added that the additional avenue for laying off instituted by Mr. Rickard, i.e., permitting voice mail communication, albeit proscribed by E.I. 22.5, was not utilized by the Claimant.

Mr. Merrell, besides reaffirming the General Manager's response, pointed out that the Claimant is expected to report for duty at the appointed time and place, but she did not show up for work and she failed to alert anyone that she would be absent. Therefore, a formal reprimand is intended to make her aware of her responsibility to either be at work or render proper notification of her intended absence in the future.

The Board will first address the matter of Roadmaster Rickard's "personal policy" for laying off work, as it was characterized by the Organization. The Board notices that E.I. 22.5 states, "Leaving a voice mail message for the Roadmaster will not be considered contacting the proper authority." Mr. Rickard described his policy at several points in the transcript:

"Also as the roadmaster, is there any policies that you have, that you have given to your employees under your jurisdiction concerning call ins or absenting yourself from duty, prior to being absent?"

"Yes there is. A lot of times, a lot of times I get pretty well wrapped up in what is going on here with the yards, and a lot of times it's hard, it's hard for somebody to reach me and get a hold of me by phone. So I have, I have set out the policy that if anybody needs to be absent all they do is provide, provide me with a voice mail before 7:00, stating that they will not be in for that day. I have left specific instructions and have briefed everybody a good six or seven, eight times in our job briefings. All my numbers on how to get a hold of me and my voice mail number is up on our bulletin board in the Maintenance of Way Department. So, since I do have some big responsibilities here in Memphis, Tennessee, all that I require is just a voice mail stating that, that if somebody is going to be absent that they call in before 7:00 and leave me a voice mail stating that they will not be in for the day." (Question and Answer [Q&A] No. 66).

"So, is the policy just for Ms. White of leaving a voice mail message?"

"As I stated earlier, in the job briefings I held with all the employees here at Memphis, Tennessee, since it is sometimes almost impossible to get a hold of me in the mornings, because I'm either on conference calls or I'm in job briefings, it would be impossible, it would be impossible to get a hold of me physically and let, you know, to let me know that they're not going to be here." (Q&A No. 91).

"So, that's when you put in the policy of leaving you a voice mail message?"

"That is correct. To all of the employees who work in the Memphis Terminal." (Q&A No. 92).

"Mr. Rickard, we've talked a lot about this policy. Do you feel that you've made it harder for people to get a hold of you or easier to get a hold of you and make themselves unavailable for work?"

"I, I know I've made it a lot easier. All they have to do is pick up the phone and leave a voice message." (Q&A No. 108).

"Was this, Mr. Rickard, was this policy put in, put in place prior, your policy put in place prior to March 27, 2002?"

"Yes, it was." (Q&A No. 109).

"Were all of your employees notified of this policy prior to March 27, 2002?"

"Yes, they were." (Q&A No. 110).

"Was Ms. White notified of this policy change prior to March 27, 2002?"

"Yes, she was." (Q&A No. 111).

"Roadmaster Rickard, Sheila ask you a little earlier if you had, asked you to put your standard operating procedures, so to speak, on, on calling you in, in writing and you said you did not, is that correct?"

"That's correct." (Q&A No. 118).

"Yet you feel she knew very well what your policy was?"

"That is correct through job briefings in the morning with everybody. She stated that she wanted a policy just for herself and I, and I felt that I wasn't going to write a single policy for everybody. That through job briefings with all our employees here in Memphis, Tennessee, that they knew what the expectations were." (Q&A No. 119).

Track Foreman Mitchell testified about his understanding of Mr. Rickard's "policy":

"Mr. Mitchell, the policy that keeps, being brought up, was that put in place prior to March 27, 2002, where the roadmaster needed to be notified if someone was going to miss work?"

"Yeah, it was prior to that, correct. It was..." (Q&A No. 199).

"From his, from his initial bringing this to everyone's attention, had that been discussed with Mr. Rickard or in job briefings between the time that it was put in place and March 27, had there been other communications about that, about calling him?"

"Yes." (Q&A No. 202).

"Would Ms. White been aware of what she needed to do in order to lay off from work on any particular day?"

"Yeah, it was implemented in job briefings." (Q&A No. 203).

"And was it communicated clearly?"

"Yeah." (Q&A No. 204).

The Board finds that this "personal policy" is actually less restrictive than the procedure set forth in E.I. 22.5, and provides an easier method of reporting off duty. It happens that, according to the Claimant, she was unable to leave a voice mail message for the Roadmaster because his mail box would not accept more messages. But this did not leave her in a more difficult position than she would have been under E.I. 22.5, which proscribes the use of voice mail for marking off.

It may well be true that no one had previously been disciplined for absenteeism, but there is a first time for everything. The issue is not absenteeism, however, but the Claimant's alleged failure to advise anyone of her intended absence on March 27, 2002.

The Board does not find MWOR 1.15 and E.I. 22.5 to be "overly vague and arbitrary," as the Organization suggests. MWOR 1.15 is similar to the rules found on any railroad (or any other industry, for that matter) governing any employee. No business could operate either economically or efficiently if employees were permitted to absent themselves at any time without any notice or permission. MWOR 1.15 requires employees to report for duty on time, and E.I. 22.5 prescribes the procedure for marking off, when one must necessarily be absent.

When the Claimant found she was unable to leave a voice mail message for Roadmaster Rickard, she had an alternative recourse, that prescribed in E.I. 22.5: "If for some reason you need to be absent; it will be necessary that you personally contact your Assistant Roadmaster or Foreman to discuss the matter with them." Here, the testimony of the Claimant and Track Foreman Mitchell diverge. The Claimant testified:

"Okay, Ms. White, on Wednesday, March 27, 2002, were you absent from work?"
"I was absent, but I did call in." (Q&A No. 214).

"Who did you call Ms. White?"
"I called my foreman, Joey Mitchell, that I always do. And then I call my Roadmaster Rickard and no response. It said his mailbox was overloaded, full that's what it said." (Q&A No. 215).

But Mr. Mitchell testified:

"On the said date, was Ms. White present at work?"
"No." (Q&A No. 20).

"Did you know that she would not be present on March 27 to perform duties?"
"No." (Q&A No. 21).

"Did you know where Ms. White was on March 27?"
"No." (Q&A No. 22).

"Had Ms. White given you any indication that she would not be present to work on March 27?"
"No." (Q&A No. 23).

On cross examination, neither the Claimant's representative, nor herself, took the opportunity to search for further truth or question the accuracy of Mr. Mitchell's statement, above.

It is plausible that Mr. Rickard's voice mail box was filled, and no contravening evidence or testimony appears in the record. But the Board is unable to resolve the disaccord between the testimony of the Claimant and that of Mr. Mitchell with respect to whether the Claimant called him to report her intended absence, as she asserted she did. It thus becomes a question of credibility. As this Board said in its Award No. 20:

"The conducting officer, who heard the words and observed the demeanor of those who testified in the investigation, is best equipped to assess the credibility of those who appeared before him, and the Board will not substitute its judgment for his."

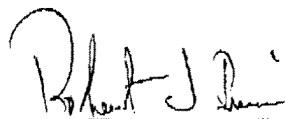
The Board finds there was compliance with Discipline Rule 91 of the Parties' Agreement, substantial evidence was adduced at the investigation to prove the charges made, and the discipline assessed, a formal reprimand, is not excessive. The claim is denied.

Public Law Board No. 6102

Award No. 30
Case No. 31

AWARD

Claim denied.



Robert J. Irvin, Referee

January 31, 2003
Date