

PUBLIC LAW BOARD NO. 7660
CASE NO. 12

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES

PARTIES

TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY
(Former Chicago and Northwestern Transportation Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s dismissal of Claimant D. McZeal by letter dated May 3, 2013, in connection with allegations that he was absent without authority in violation of General Code of Operating Rules 1.15 (Duty - Reporting or Absent) was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File G-1319C-01/1586230 CNW).
2. As a consequence of the violation referred to in Part 1 above, the Carrier shall now return Claimant McZeal to service and make him whole of any lost compensation at the applicable rate of pay.”

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant was a Trackman on Gang 2941 in Ft. Dodge, IA at the time of his dismissal for having his third absence without authorization within a 36 month period on May 3, 2013; he began his employment with the Carrier in June, 2008. There is no

dispute that (1) Claimant was absent on April 18 and 19, 2013, (2) he was to return from a 10 day suspension for his second Rule 1.15 absenteeism infraction on April 18 at 7:00 a.m., (3) he was in jail at the time and had notified Manager Deurloo that he was incarcerated in a phone call on March 15 with respect to prior instances of absence, and (4) Claimant called Manager Deurloo at 8:40 a.m. on April 18 and informed him that he got a system job and asked to be released.

The evidence adduced at the May 1, 2013 Investigation presents a conflict as to what the response was to Claimant's request to be released on April 18. Deurloo testified that he asked Claimant when the new job started and was told the following week, and indicated that he would release him then because he needed help now, and that as of this time he was absent. Claimant stated that when he told Deurloo that he was catching a bid on another job and asked to be released, that his response was that he would, which Claimant understood to mean as of that day, April 18. Deurloo stated the he did not receive the email notification that Claimant's position was vacant until April 19 at 10:01 a.m., so he considered Claimant absent without approval on April 18 & 19, but not on April 22, since he had released him as of the following week. Claimant testified that he was released from jail and returned home over the weekend, called Deurloo on April 23 between 5 and 6 a.m. indicating that he was bidding his job back and asking if he could come to work pending his bid, and was told that he could, so he reported at 7 a.m. on April 23. Deurloo stated that he issued and sent the Notice of Investigation on April 22, 2013 charging Claimant with his April 18 and 19 absences without approval, and indicating that he was removed from service pending the results of the investigation. Deurloo needed help and did not recall that Claimant had been removed from service, but was reminded of that fact by his Manager, so he met Claimant at 7 a.m. on April 23 and took his keys and removed him from service.

Carrier argues that there is substantial evidence in the record to support the charge of absence without approval on April 18 & 19, 2013, which, being Claimant's third such

violation of Rule 1.15 within a 3 month period of time, results in automatic dismissal under the progressive penalty provision of its UPGRADE policy, of which Claimant was aware. It points out that the Organization made no procedural objections in this case.

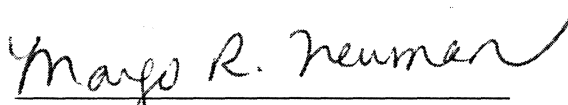
The Organization contends that Carrier did not meet its burden of proof as the testimony of Manager Deurloo was conflicting and fabricated, and Claimant's belief that he had been released from the gang on April 18 was more likely what occurred in that phone conversation, based upon the weight of the evidence. It asserts that Carrier's failure to charge Claimant with his absence on April 22, and the Manager permitting him to return the following day until told by his superiors to remove him from service, support its position that Claimant was released on April 18 and should not be charged with those absences. The Organization argues that the discipline was arbitrary and unwarranted since no violation of Rule 1.15 was proven.

A careful review of the record convinces the Board that Carrier has met its burden of proving that Claimant was guilty of a violation of Rule 1.15 by his failure to attend work on April 18 and 19, 2013 without authorization. We note that Claimant did not testify that his Manager actually told him he was released on April 18, but agreed that he would release him for his new position, which was set to commence the following week. Claimant's belief that he was released was based more on the fact that he was incarcerated on the dates of his absence, and not able to attend work as scheduled, rather than proof that he was authorized to be absent by his Manager. Although his Manager was informed on March 15, 2013 that Claimant was in jail, he was never told the duration of the incarceration, or when Claimant would be able to actually return to work, despite Claimant being informed that he was to return after his suspension on April 18. There is no contention that authorization was granted to Claimant not to report on April 18 during the March phone conversation. Since the charges were proven, the Board is unable to find that Carrier was arbitrary or excessive in dismissing Claimant from service, since such penalty was consistent with its UPGRADE policy for a third Rule 1.15 absenteeism

violation within a 36 month period (here, in a 3 month period). Accordingly, we find no merit to the claim.

AWARD:

The claim is denied.



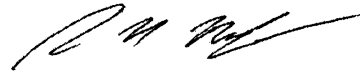
Margo R. Newman
Neutral Chairperson

Dated: 1/15/2016



K. N. Novak
Carrier Member

Dated: 1/15/2016



Andrew Mulford
Employee Member

Dated: 1/15/2016