

SPECIAL BOARD OF ADJUSTMENT NO. 924

ward No. 57
Docket No. 66

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The ten (10) day suspension assessed Trackman L. A. Diamond for allegedly being absent on May 20, 1984, was without just and sufficient cause and unwarranted. (Organization File 40-4589; Carrier File 81-92-22-D).
- (2) Claimant R. A. Diamond shall be allowed the remedy prescribed in Rule 19(d)."

FINDINGS:

This Board, upon the whole record and all the evidence, finds and holds that the employee and the Carrier involved, are respectively employee and Carrier within the meaning of the Railway Labor Act as amended, and that the Board has jurisdiction over the dispute herein.

Claimant, with about nine years of service, was employed by the Carrier as a trackman and was working as such on the week-end gang in Council Bluffs, Iowa, under Foreman Ruben Martinez. The record shows that on May 20, 1984, claimant did not report for work, nor did he receive proper authority to absent himself. On May 25, 1984, claimant was instructed to appear for a hearing scheduled for 11:00 A.M., May 30, 1984, on the charge:

"Your responsibility in connection with absenting yourself from your work assignment without authority on Sunday, May 20, 1984."

The hearing was postponed and conducted on June 8, 1984. A copy of the transcript of the hearing has been made a part of the record. Claimant was present throughout the hearing, was represented, and presented a witness in his behalf, Foreman Martinez.

In the hearing claimant stated that he was absent on May 20, 1984; that he did not contact the Roadmaster or the Assistant Roadmaster; that he attempted to call in, beginning about 6:45 A.M. and continuing until about 7:30 A.M. to contact someone in the Roadmaster's office; that he finally got through and contacted Foreman Martinez about 8:00 A.M., or 8:05; that he intended to report late due to car trouble -

a flat tire on his truck and the spare was at a service station. He stated that in his conversation with Martinez he was informed that the Assistant Roadmaster "was going to write me up," and that he then informed Martinez that "I wasn't feeling too well I just might as well stay at home." Martinez testified that claimant had talked to him about 8:00 A.M.; that he told the claimant that the Assistant had been there and "they were probably going to write him up;" that the Assistant Roadmaster was not at the tool house at the time that he talked to claimant, and that his response to claimant about being written up was his own opinion, and that he did not advise the Assistant Roadmaster about his conversation with claimant.

The Assistant Roadmaster indicated there were several locations where he could have been on the morning of May 20, 1984. Retestified:

"....for weekend duty I just show up at the Fremont tool house, the Blair Roadmaster's office, or Council Bluffs, as I did that weekend."

If the Roadmaster or the Assistant Roadmaster were the only ones with authority to permit an employee to be late or absent, it would appear only proper that such persons would have fixed locations to receive calls. As stated in National Railroad Adjustment, Third Division Award No. 23039:

"While the rule clearly requires an employee to obtain authority prior to being absent, it also obligates his supervisor to be available to receive such requests."

We agree with the statement of the Organization in the appeal on the property:

"The transcript shows that the Carrier expects their employees to call all over the property in order to be excused from duty. This expectation is totally unrealistic and unreasonable."

Also, in the hearing the Assistant Roadmaster stated:

"Well, car problems are not valid reasons to miss work."

Such position has also been rejected. In Third Division Award No. 20198 it was held:

"...In the absence of a clear showing of alternate transportation to work, it could not reasonably be said that car trouble is not good cause for a one-day

"absence from work. The role of the automobile in American work life is too well known to require discussion."

See also Third Division Award No. 24574 and Award No. 181 of Public Law Board No. 1582.

If the dispute herein involved only the matter of claimant being late for a reasonable time due to car trouble, we would have an entirely different situation, and possibly a different result, but claimant, of his own volition, remained off from work the entire day after Foreman Martinez mentioned to him the possibility of his being written up. His response that "I wasn't feeling too well I might just as well stay at home," was, no doubt, simply a knee-jerk reaction to what the foreman had told him. The claimant has shown no justification for being absent the entire day. He was subject to discipline for his action in this respect. The ten-day suspension was not arbitrary, capricious or in bad faith. The claim will be denied.

A W A R D

Claim denied.

Benny Elkins
Carrier Member

Paul C. Carter
Chairman, Neutral Member

H. G. Harper
Labor Member

DATED: Oct 3, 1985.