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AWARD NO. 4
NRAB DOCKET NO. CL-7892
CASE NO. 4
SSW FILE R-51-1115
BRC FILE 26-155

SPECIAL BOARD OF ADJUSTMENT NO. 169

PARTIES) The Brotherhood of Railway and Steamship Clerks
TO)
DISPUTE) St. Louis Southwestern Railway Company

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

That Mr. Thomas C. Tharpe; an employee in the office of Superintendent of Transportation at Tyler, Texas, be restored to service with seniority and vacation rights unimpaired and compensated for wage loss suffered from September 5, 1952, or date removed, until he is restored.

FINDINGS: Claimant here was given an investigation on the charge that he "absented himself from duty September 5, 1952, without proper authority." At the investigation, evidence was taken showing that on the morning of September 5, 1952, claimant did absent himself from his duties without proper authority.

Rule 20 of the operating rules of the Carrier reads as follows:

"20. Employees must not absent themselves from their duties, exchange duties with nor substitute others in their place, without proper authority."

There is substantial evidence in the case to support the charges against the claimant here that he did absent himself from duty on that morning without proper authority. This Board is limited in its jurisdiction to interfere with the discipline assessed where there is substantial proof to sustain the charge against the employee. The Board finds there was substantial proof to support the charge and it is not within our province to interfere with the discipline assessed.

AWARD: Claim denied.

/s/ Frank P. Douglass
Frank P. Douglass, Chairman

/s/ W. E. Straubinger
W. E. Straubinger, Employee Member
(Dissent attached)

/s/ L. C. Albert
L. C. Albert, Carrier Member

Tyler, Texas
March 7, 1957.

EMPLOYEES' DISSENT TO AWARD NO. 4

The majority finds:

"There is substantial evidence in the case to support the charges against the claimant here that he did absent himself from duty on that morning without proper authority."

The decision in this claim is a travesty of justice. Claimant had followed the method of securing one-half day vacation on the morning of September 5, 1952, in a manner similar to other occasions, as evidenced by transcript of the investigation. Even on the morning of September 5, 1952, Carrier representative did not inform Claimant that his desire to take one-half day vacation (handled through Stenographer, due to Acting Chief Clerk being busy on another telephone), was not agreeable.

During the course of the investigation, Mr. C. O. Bryan, Representative of Claimant, asked Acting Chief Clerk Carraway the following question:

"If these instructions, as you say, applied to Mr. Tharpe, why did you not advise him on September 4th and on prior occasions in August, that the manner in which he was taking or arranging for his vacation was not agreeable and that he must ask for permission for such vacation?"

Answer by Acting Chief Clerk Carraway:

"I had never talked to Mr. Tharpe at 1:30 A.M., in the morning prior to the morning of September 5th."

Within the above answer lies Carrier's reason for holding Mr. Tharpe out of service and for dismissing him from the service after completion of investigation. Mr. Carraway admits there would have been no question about Mr. Tharpe being marked off for a half-day's vacation on September 5th, 1952, had it not been for the reason he had "talked to Mr. Tharpe at 1:30 A.M., in the morning."

I submit that Thomas C. Tharpe followed the practice which had been in effect for many years in the office of Superintendent of Transportation, and that Carrier dismissed him for an act other than that with which he was charged.

For the above reasons, I dissent.

/s/ W. E. Straubinger
W. E. Straubinger, Employee Member

CARRIER'S CONCURRING OPINION IN AWARD NO. 4

The Employees' dissent to Award No. 4 does not present the material facts in the case and makes certain allegations not supported by such facts, which would be misleading to one not familiar with the case.

Briefly the facts are that about 1:30 AM on date involved claimant telephoned the acting chief clerk at home and stated that he was drunk, and requested that he be permitted to take one-half day's vacation on his assignment which started at 8:00 AM that morning. The acting chief clerk declined to grant the request, stating that he would not discuss the matter with claimant while he was in such condition.

Claimant did not report for work at 8:00 AM, his assigned starting time, but telephoned about 8:20 AM and talked with a stenographer while the acting chief clerk was busy on another telephone. He stated he had overslept and that it would require about an hour and a half for him to get ready and get to work. He requested the stenographer to ask the acting chief clerk to give him a half days vacation.

His request for vacation was not granted and he was cited for investigation on the charge of absenting himself from duty without proper authority. In the investigation he admitted he did not report for duty at his assigned starting time and that he had not secured authority to be absent. He admitted the conversation the preceding night. His violation of the rule was plain from the evidence developed.

He had been previously disciplined and repeatedly warned because of absenting himself from duty without proper authority.

His dismissal was fully justified.

In their defense of the case the Employees did not deny that claimant was absent as stated, but urged that it was permissible and proper for an employee to not report at his starting time, and then later call in and expect to be given vacation.

Their theory is clearly in error. The rules, for good reason, prohibit absence from duty without proper authority. When an employee does not report at his assigned starting time without prior permission to be absent, he is absent without proper authority. If his absence is for good reason and not through his own fault, his absence may be excused. If his absence is through his own fault, then he is subject to discipline. If that were not true, and an employee could with impunity simply call in late and state that he desired to lay off or take vacation that day, then a supervisor could never have any assurance as to what force he would have on any day. All employees in an office might elect to be absent on the same day. When an employee, as in this case, calls in twenty minutes late and states that he cannot dress and be at work for an hour and one half, he has deprived the Carrier of his services for a very substantial portion of the day, even if his request is not granted and he is required to report as soon as possible.

As stated, there is good reason for the rule involved and for discipline to enforce the rule when an employee violates the rule. The claimant flagrantly and persistently violated that rule, and dismissal clearly was proper.

/s/ L. C. Albert
L. C. Albert, Carrier Member