

PUBLIC LAW BOARD NO. 4901

AWARD NO. 126
CASE NO. 126

PARTIES TO
THE DISPUTE:

United Transportation Union
vs.

Burlington Northern Santa Fe Railway Company
(Coast Lines)

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

DATE: September 4, 2000

STATEMENT OF CLAIM:

"Request in behalf of the Valley Division Engine Foreman G. A. Holcomb for the removal of the Level 6 dismissal from service and alleged violations of Rules 1.13 and 1.15 of the General Code of Operating Rules, effective April 10, 1994, and General Order No. 88 in effect April 1, 1995, and Superintendents' Notice V-103 in effect April 1, 1995, from the Claimant's personal record and for the Claimant's reinstatement to the service of the former Atchison, Topeka and Santa Fe Railway, now the Burlington Northern Santa Fe Railway Company, Coast Lines, with seniority and all other rights unimpaired and pay for all time lost including the payment of Health and Welfare Benefits beginning on November 28, 1995, and continuing until returned to service."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Claimant was discharged for absence without proper authority from June 20, 1994 through the date of the Carrier's Notice of Investigation, November 6, 1995. At Claimant's request, the investigation was postponed until November 28th.

Although the Notice of Investigation informed Claimant of his right to arrange for representation in line with the provisions of the Agreement, he chose to represent himself. The investigation thus proceeded. Claimant raised no procedural objections to the conduct of the investigation. He also acknowledged understanding all of the rules read during the investigation.

The facts adduced at the investigation show that Claimant sustained a non-work related injury to his legs in April of 1992. He remained off work thereafter on leave of absence. By letter dated April 14, 1994, Claimant's leave of absence was extended through June 20, 1994.

The extension letter clearly informed Claimant that if a further extension was needed, a physician's recommendation had to be submitted to his superintendent's office prior to the expiration of the authorized period. The letter also informed Claimant that a formal leave of absence was required after an absence of more than one year. The superintendent, therefore, enclosed a Form 1516 Standard for completion by Claimant. The letter also referred Claimant to a member of the superintendent's staff if he had any questions.

There is no evidence that Claimant did anything to obtain an extension of his leave beyond June 20, 1994. No medical statement was submitted nor was the Form 1516 returned completed.

Approximately one year later, by letter dated June 15, 1995, a member of the superintendent's staff wrote to Claimant about his lapsed leave of absence. The letter asked Claimant to contact her office. There is no dispute that Claimant did call the Carrier official. According to his testimony, he could not see a doctor until December 1, 1995. Claimant was on public assistance. The applicable county jurisdiction was apparently restricting his ability to see a doctor. Claimant also said he had no money of his own to see a doctor.

By letter dated August 18, 1995, the superintendent informed Claimant that he must immediately arrange for an extension to his leave by providing a current medical statement no later than ten days from receipt of the letter. The letter went on to warn that a failure to comply would be handled in accordance with the rules.

By letter dated August 29, 1995, the superintendent enclosed a Form 1516 Standard for completion by Claimant and asked that it be returned with a doctor's statement. The superintendent enclosed a stamped, self-addressed envelope for Claimant's use.

By letter dated October 5, 1995, the superintendent again wrote Claimant to note that he had not received any response to his two August letters. Claimant was given an additional five days to supply the requisite information. The superintendent warned that failure to do so would result in disciplinary action.

When no response was forthcoming from Claimant, Carrier's Notice of Investigation issued. At the hearing, Claimant acknowledged receiving the superintendent's letters and he admitted he had not supplied the desired information. The record does not reflect that Claimant supplied any medical information whatsoever -- not even a report of his most recent past examination. Moreover, at no time did he complete and return a Form 1516 Standard.

Our review of the transcript of the investigation does not reveal any significant procedural irregularities. Moreover, as noted previously, no procedural exceptions were taken during the hearing. While the Organization later objected to the fact that certain Carrier officials did not testify, it does not appear that they would have had anything to add beyond what Claimant asserted in his testimony, which Carrier did not dispute.

On the merits, the record makes it clear that Claimant did not comply with Carrier's

requirements for obtaining an extension to his leave of absence for nearly a year and a half after his latest extension expired. Carrier's requirements are not unreasonable. Indeed, they appear to be the product of joint discussions between the Carrier and the Organization that recognized the need for a uniform set of procedures to govern the granting of leaves of absence.

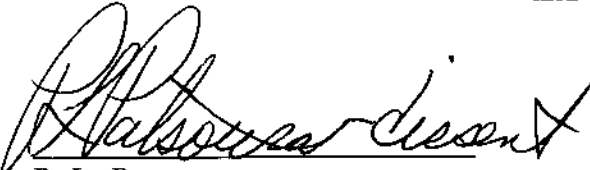
The question thus becomes whether factors wholly personal to an employee, for which the employer bears no responsibility whatsoever, can be used to repeatedly excuse non-compliance with reasonable work rules? The question must be answered in the negative on the facts of this record. In this regard, the instant situation is roughly analogous to the incarceration cases. It has been repeatedly held by the National Railroad Adjustment Board and various Public Law Boards that incarceration for off-duty personal activities does not excuse absence from work without proper authority.


Under the circumstances of this record, we do not find that Carrier has unreasonably administered its leave of absence rules or that it has abused its discretion. The Claim, therefore, must be denied.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


P. L. Patsouras,
Organization Member


Gene L. Shire,
Carrier Member