

Referee Harold M. Weston

PARTIES Railroad Yardmasters of America  
TO  
DISPUTE: Penn Central Transportation Company

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America that:

PITTSBURGH TERRITORY

SYSTEM DOCKET 359 - MINGO JCT. CASE YM-26-71

Appeal of the disqualification of Assistant Yardmaster T. R. Albaugh, effective upon completion of his tour of duty, September 4, 1970.

OPINION OF BOARD: This dispute concerns Claimant's disqualification as assistant Yardmaster and Yardmaster. The reason assigned by Carrier for this discipline is that Claimant is guilty of "deserting" his assignment without permission September 2, 1970, and permitting a crew under his jurisdiction on that same date to leave Company property before their eight hour tour of duty was completed.

In the context of the record before us, "deserting" seems a rather extreme finding, particularly since Claimant, according to uncontroverted evidence, appears to have been a competent, conscientious and hard working employe who cooperated when asked to work overtime and indeed had not had a rest day for the eight week period immediately prior to September 2, 1970. On the day in question, he had already worked his regular assignment from 7 a.m. to 3 p.m. and had agreed to work beyond his regular assignment and work the second trick position at 300 Yard beginning 3:15 p.m.

The fact that Claimant left work at about 8:35 p.m. instead of 11:15 p.m. appears to have been the result of a misunderstanding as indicated by his forthright replies to questions at his hearing, his signing out and claiming no more than the hours he had completed, the absence of a second trick position at that location and what appears to have been a sincere belief that he could leave when he had completed the work before him.

If these facts stood alone, the record would have supported at the most a relatively short suspension. The material defect, however, in Claimant's position is that he released the crew after it had been on duty for less than six hours and did so, as he concedes, without notifying or obtaining permission from the Yardmaster or any other appropriate superior or ascertaining from them whether they had any additional work for the crew to perform. He had no right to deprive Carrier of the crew's services, even if he were under the impression that he himself had completed the work that had been assigned to him and was free to leave. Under the circumstances, there is no ground for holding that Carrier was unjustified in administering substantial discipline. Dismissal is excessive in view of Claimant's good record but we will direct Carrier to offer immediate reinstatement to Claimant of a Yardmaster or Assistant Yardmaster position with seniority rights unimpaired but without back pay.

We agree that time limit violations should be strictly enforced but only if they are clear and raised in timely fashion. Carrier's procedural objections must be rejected since they were not pleaded when the claim was finally rejected on the property while Petitioner's contention that Carrier did not comply with time limit requirements are not persuasive since they are unsupported by specific agreement provisions and the record does not establish that any delays on Carrier's part were prejudicial or amounted to laches.

**FINDINGS:**

The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute waived right of appearance at hearing, but were granted privilege of appearing before the Division with Referee sitting as a member thereof, to present oral argument.

A W A R D

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

ATTEST:

*E. A. Killeen*  
E. A. Killeen  
Secretary

Dated at Chicago, Illinois, this 28th day of February 1973.