

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISIONAward Number 4059
Docket Number 3961

Referee George E. Larney

PARTIES Railroad Yardmasters of America
TO
DISPUTE: Baltimore and Ohio Railroad Company

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

Yardmaster C. N. Kramer be allowed one hours pay at the yardmaster pro rata rate of pay for attending investigation on August 20, 1980 and one hours pay at same rate for attending investigation on September 2, 1980. Also that he be paid one days pay at pro rata rate for each day lost as result of discipline assessed of fifteen (15) days actual suspension and served on September 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 1980. Also requesting that Claimant's record be cleared.

OPINION OF BOARD: The record evidence reflects that on Thursday, August 13, 1980, Claimant Clifford N. Kramer was assigned to work the Yardmaster position at Carrier's Zanesville, Ohio location between the hours of 6:55 PM to 2:55 AM, August 14, 1980. At or about 12:15 AM, Division Manager L. O. Robinson and Assistant Superintendent Operations S. C. Ball, entered the yard office and there, encountering Operator-Clerk John McCormick, inquired of him as to where the yard crew was and also as to whether there was a Yardmaster on duty. McCormick told Robinson and Ball that when he reported in at 11:00 PM for his third trick assignment he saw the Claimant, identifying him by name, but that he had not seen him since between 11:00 and 11:30 PM. Robinson and Ball remained at the Sanesville Yard office till approximately 12:50 AM, waiting for Claimant to return. During this period of time of approximately thirty-five (35) minutes, Claimant failed to present himself at the yard office and as a result Robinson and Ball departed from the scene.

On date of August 15, 1980, Claimant was issued written notification to attend an investigation to be held at 9:00 AM on Wednesday, August 20, 1980, in connection with the charge of absenting himself from duty at Zanesville, Ohio without permission from proper authority at approximately 12:15 AM, August 14, 1980. The Hearing commenced as scheduled, but then, after the taking of some testimony for a little over an hour, the hearing officer adjourned the proceedings in order to permit the calling of Carrier witness, Assistant Trainmaster, W. E. Johnston who was then unavailable to testify. The record evidence reflects Carrier attempted to reconvene the hearing at 9:30 AM on August 22, 1980, but the Organization requested that on this date the hearing begin at 3:30 PM or if this was not acceptable then at 9:30 AM on August 23rd. The Organization contends that its request for reconvening the hearing on these dates was never acknowledged by Carrier and that Carrier unilaterally set the next hearing date for 9:30 AM on September 2, 1980, which was the first date Carrier witness Johnston was available following his return from vacation.

At the hearing Assistant Trainmaster Johnston testified that on date of August 14, 1980, he called the Zanesville Depot and left a message for Claimant to call him when he arrived at work that evening to commence his tour

of duty. When Claimant returned the call, Johnston, according to his testimony, asked Claimant where he had been during the time of Robinson's and Ball's visit. Johnston testified Claimant informed him that shortly before midnight he had left Zanesville and had left his home phone number with the Operator-Clerk on duty in case an emergency should arise that would require his jurisdiction. Johnston related he advised Claimant that in the future, if any problem arose where it would be necessary for him to leave his post, he was to contact him (Johnston) personally or the Chief Dispatcher so that they could protect his being gone. Johnston indicated that based on this conversation, it was his understanding the Claimant did absent himself from Company property prior to midnight on August 13, 1980. It is noted that Johnston was the Carrier official who issued the formal charge against the Claimant.

Claimant, in his testimony, takes vigorous exception to the statements made by Johnston regarding their telephone conversation on August 14th. Claimant denies that in this conversation Johnston made any inquiry as to his whereabouts on his previous tour of duty. Rather, Claimant recalls that he and Johnston talked about conditions and cars in the Zanesville yard and that Johnston cautioned that when conditions such as those that existed the previous day east of Zanesville arose, it was not advisable for him to leave the yard office as he should be available in case something occurred requiring his attention. Claimant testified he agreed with Johnston's advice on this latter point.

Claimant testified that at 12:15 AM on August 13th, the time Robinson and Ball appeared in the yard office, he was on B&O property in the area of the Furnace Track checking on debris the yard crew had reported was on the east end of the track. At 12:50 AM, the time Robinson and Ball left the yard office, Claimant testified he was at the Scale House on the property, having taken fuses to that location and while there he swept some water from the Scale House. Claimant explained that due to the expanse of the Zanesville yards, it was necessary for him to depart from the property during his normal scheduled working hours to use city streets to travel from one yard location to another. Claimant states he did not go home prior to the end of his tour of duty and that at or about 2:55 AM, his quitting time, he left from the B&O property. Claimant, in his testimony denies that in his conversation with Johnston he told Johnston he went home early because there was nothing doing at the yards.

Operator-Clerk McCormick testified that at no time during his tour of duty did he have occasion to leave the yard office to go to the Yardmaster's office. Further, that he was not in a position to determine whether Claimant returned to the area of his office prior to or at the end of his tour of duty because at this time, approximately 3:00 AM, he (McCormick) was taking orders for an eastbound and a westbound train. Finally, McCormick related, Claimant did not leave his telephone number with him on the evening of August 13th and that he did not know whether Claimant had left his number with the Operator-Clerk on duty the second trick.

On September 3, 1980, Claimant was advised by letter signed by Division Manager L. O. Robinson, that he had been found at fault for absenting himself from duty without permission from his immediate supervisor in violation of Operating Rule P, second paragraph, and Operating Rule 1401, both rules of

the current Chessie Operating Rules dated July 1, 1980. These two (2) rules are cited hereinbelow as follows:

"GENERAL RULE P.

(second paragraph only)

No employee will absent himself from duty or engage a substitute to perform his duties without permission from the immediate supervisor."

"YARDMASTERS RULE 1401

They are responsible for the safe and efficient operation of the yards. They must be familiar with the rules and special instructions for movement of trains and for government of employes in train and yard service and must require the prompt and efficient discharge of duty by employes who are subject to their direction.

They will be responsible for and control the movement of track cars under their jurisdiction. They will maintain a record of track car movements in the Yardmasters Log."

Carrier argues that based on the testimony adduced at the hearing there was elicited substantial probative evidence to support the finding that Claimant absented himself from duty as charged. In support of this contention, Carrier cites certain excerpts from the testimony given by Witnesses Ball, Johnston, and McCormick. Carrier acknowledges that while there was some conflicting testimony presented at the hearing, it nevertheless weighed all testimony before rendering its decision. In regard to this latter point Carrier reminds the Board that numerous awards have held that management has the right to make such a determination as to the credibility of witnesses and that the Board will neither pass upon such credibility findings nor weigh the evidence in its review of cases.

The Organization raises a number of procedural issues which it contends causes the instant claim to be resolved in Claimant's favor without ever having to reach the merits of the subject matter in controversy. Notwithstanding this latter position, the Organization asserts Carrier has failed in its burden of proof in demonstrating Claimant did, in fact, absent himself from work as so charged.

This Board, upon a close and careful review of the hearing transcript and a critical assessment of the arguments advanced on both sides, determines there is an overwhelming lack of evidence to support Carrier's charge Claimant absented himself from duty. There is nothing of a conclusive element to any of the testimony offered which we ascribe to be of particular failing to Carrier's position since it is the party that bears the burden of proof. We wish to emphasize that we did not arrive at this determination based on comparing testimony of the various witnesses nor did we engage in attempting to assess credibility. While we acknowledge discrepancies in the testimony offered we find this to be subordinate to the fact that neither side proffered any probative evidence to support its position and as we previously stated this was fatal to

Carrier's case. In so finding, we do not believe it necessary to address the myriad of procedural issues raised here by the Organization and accordingly we dismiss them as being moot.

The Board directs Carrier to pay the Claim as stated.

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

The Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 were given due notice of hearing thereon.

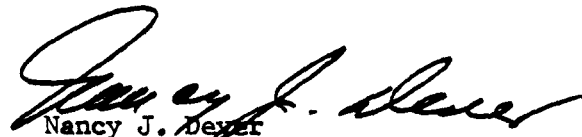
The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:


Nancy J. Deyer
Acting Executive Secretary

Dated at Chicago, Illinois, this 18th day of August, 1983.