

PUBLIC LAW BOARD NO. 3738

AWARD NO: 10
DOCKET NO: 55-M

PARTIES TO DISPUTE

CARRIER
CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

AND

ORGANIZATION
UNITED TRANSPORTATION UNION

CARRIER'S FILE NO.

02-84-470-D

ORGANIZATION'S FILE NO.

N470-577-83

STATEMENT OF CLAIM:

"claim of Conductor C. Brown, Illinois Division, for reinstatement to the services of the Transportation Company, with vacation and seniority rights unimpaired, in addition to the payment of any and all health and welfare benefits until reinstated, and that he be compensated for any and all lost time, including time spent attending an investigation held on December 29, 1983 proviso Illinois when charged with an alleged failure to be available at approximately 2:50 PM on December 23, 1983 when called for WSLAT which commenced duty at 4:45 PM when assigned to Illinois Division Trainman's Extra Board. Request and claim based on provisions of Road Rule 83 of the applicable schedule."

STATEMENT OF BACKGROUND:

On the incident date in question, December 23, 1983, Claimant, Clemons Brown, was assigned to the Illinois Division Trainman's Extra Board. According to his testimony at the investigation held on December 29, 1983, he telephoned Carrier Staff Officer Jamie Essary who is in charge of the crew caller's office at approximately 11:30 A.M. and attempted to lay off, explaining to Essary that he had his 8 year old son with him. In his testimony, Essary recalled that Claimant did telephone him on the morning of December 23 expressing a desire to lay off but that

the reason given was non-specific, to wit, that he had some family commitments he wanted to take care of. Essary recounted he told Claimant he would see what he could do for him and advised Claimant to call him back a little later. Essary stated that in checking he found Claimant was about 4 times out on the board, that there was considerable operational activity that day (it being a holiday period), and that the whole board was getting exhausted. Essary testified that in his conversation with the Claimant that morning he, at that time, did not grant him permission to lay off and told Claimant that the railroad was going to run that holiday weekend and that the people on the extra board were needed. In his testimony, Claimant acknowledges he did not gain permission from Essary to lay off after contacting him in the morning.

At or about 2:50 P.M., Claimant received a call from the crew caller assigning him to Train #245 (WSLAT) for 4:45 P.M. at Proviso, East 5. Claimant testified that he attempted to refuse the call by trying to explain his personal circumstances of having to watch his son, but that the crew caller hung up on him. Claimant acknowledges that in not being able to communicate his personal needs to the caller at this time that, in fact, the call was accepted. After being contacted by the crew caller, Claimant next attempted to reach his ex-wife so that she could take care of his son, but she had already left wherever she was. Claimant testified he immediately began trying to reach the crew caller starting at about 3:05 P.M. but that he was unable to get through because the lines were busy and that when he did get through on the lines, the callers did not answer the phone. Claimant testified that he also called the dispatcher twice and the Local Chairman to explain his plight but to no avail. Claimant did finally reach the chief dispatcher and told him he did not want the job stuck and to get a brakeman out there. Claimant related further that he finally reached the crew caller at about 4:20 P.M. explaining that he had to watch his son and the crew caller advised him he would be sticking the job and that he would be written up. Claimant stated that he next called Essary back at about 5:00 P.M., recalling that was the agreed upon time he should call Essary from their discussion that morning. Essary testified he did not recall setting a specific time Claimant should get back to him, but ventured that he might have told Claimant he would be in his office until 5:00 P.M. In any event, Essary stated he did not hear from Claimant until after he had stuck the job.

Claimant, in his testimony, declared that had he been able to get someone to watch his son, he would have protected his assignment. Claimant further explained he did not move immediately to secure babysitting arrangements for his son after his morning conversation with Essary, as he felt there was some chance he could lay off, plus the fact that given his placement on the extra board, he figured he would not be called out until about 8:00 or 9:00 P.M.

The record evidence reflects that Claimant has had a substantial problem with absenteeism and that the instant case arose just eight (8) months following his reinstatement on a strict leniency basis. The previous dismissal resulted from Claimant's failure to be available when called from the extra board.

It is noted that Carrier's Rule 702 and Agreement Rule 98 are pertinent to this case and respectively read as follows:

RULE 702 -

"Employees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties with or substitute others in their place, without proper authority."

RULE 98

"98. Permission to lay off: Trainmen will be allowed to lay off on account of sickness to themselves or their families, to serve on committees, or for other good and sufficient reasons, provided due notice is given to the proper officer."

FINDINGS:

The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 2, 1964, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Notwithstanding Claimant's admission he did not have permission to lay off and therefore, ultimately did not protect his assignment on the date in question. We find the existence of extenuating circumstances in this instant case. We are inclined to believe Claimant had a problem in connection with watching his young son and attempted to deal with it by requesting in advance to lay off. We are persuaded that such an effort falls within the purview of Rule 96. On the other hand, we discern that the record evidence establishes that in connection with Rule 702 and the needs of the Carrier during the holiday period, Claimant's obligation to protect his assignment was such that when he did not gain permission to lay off, he should have immediately taken measures to secure babysitting arrangements for his son irrespective of what time he estimated he would be called.

However, Claimant was in a bind and we are of the opinion that his attempts to secure permission to lay off in advance is a sign that he has learned something from previous discipline about his responsibilities to protect his assignment. Accordingly, we rule to reinstate Claimant to his previous status, that is, on a strict leniency basis for a remaining period of four (4) months. Reinstatement to his former position shall be without back pay but with seniority unimpaired and shall be accomplished within a reasonable period of time from the issuance date of this Award.

A W A R D

Claim sustained as per findings.

Donald L. Mackgraf
Employee Member

Barry E. Smith
Carrier Member

Mr. E. J. [Signature]
Neutral Member and Chairman

CHICAGO, ILLINOIS

DATE: July 22, 1985

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