Form 2(a)

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

ORDER

To accompany (Award No. 6710
(Docket No. 6574

Mr. James E. Yost, President
Railway Employes' Dept., AFL-CIO
220 South State Street
Chicago, Illinois 60604

The Division, after consideration of the Docket identified above, hereby orders that an award favorable to the petitioner should not be made. The claim is denied as set forth in the Award, a copy of which is attached and made a part of this Order.

Executive Secretary
National Railroad Adjustment Board
By Order of Second Division

By Rosemarie Brasch
Rosemarie Brasch
Administrative Assistant

Mr. E. A. Manetta
Vice President
Personnel
Norfolk & Western Railway Co.
Roanoke, Virginia 24011

Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6710
Docket No. 6574
2-N&W-CM-'74

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

Parties to Dispute: (System Federation No. 16, Railway Employes' Department, A.F. of L. - C.I.O. (Carmen)
(Norfolk and Western Railway Company

Dispute: Claim of Employes:

1. That Carman Dennis M. Loughlin was unjustly dismissed from all services with the Carrier on February 22, 1972, as a result of an investigation held on February 8, 1972.

2. That the Carrier be ordered to immediately restore Carman D. M. Loughlin to service and to his former position with seniority unimpaired, fringe benefits, and that the Carrier compensate Carman Loughlin eight (8) hours at pro-rata rate of pay of his former position for February 22, 1972, and for each day thereafter until he is restored to service.

3. That the Carrier be ordered to pay the Claimant an additional 6% per annum compounded annually on the anniversary date of dismissal.

Findings:

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

The carrier or carriers and the employe or employes 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.

Parties to said dispute waived right of appearance at hearing thereon.

After an investigation, Claimant was dismissed from service effective February 22, 1972. The investigation was called to determine Claimant's "responsibility, if any, in being absent without permission Wednesday, January 26th and Thursday, January 27th, 1972." At the time of his discharge, Claimant had been an employe of the Carrier for nearly nine (9) years.

It has been firmly established by Claimant's own testimony that he was absent and did not work the scheduled hours on January 26 and 27, 1972. When asked why, he answered as follows:

> "I had no heat in the place where I was living, and because of this, I had a bad cold and sore throat. The 26th, I called, there was no answer, I fell asleep. The 27th, I had a friend call for me. According to them the message was taken."

Rule 20 of the Agreement between the parties provides the following:

> "In case an employe is unavoidably kept from work, he will not be discriminated against. An employe detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible, not later than noon of the second day, unless unable to do so."

Employes argue that, based on the testimony in the record, Rule 20 fully protects the Claimant and exempts him from disciplinary action of any kind. January is a cold month, heating difficulties generate many physical and personal problems. In view of the many difficulties experience by the Claimant on January 26 and 27, 1972, "permission to be absent from work in this case," say the Employes, "is explicitly provided in Rule 20 with or without notification of the foreman."

Assuming that all the conditions testified to by the Claimant existed on January 26 and 27, the fact remains that Rule 20 required him to "notify his foreman as early as possible" and "not later than noon of the second day, unless unable to do so." There is no convincing evidence that he was ever unable to notify his foreman. He was physically and mentally able to make the call. He made only one telephone call and that was between 12:00 midnight and 12:05 a.m. on January 26. If he received no answer, he could have called again and again until someone responded. It is no valid excuse that he fell asleep.

Claimant certainly did not sleep 24 hours around the clock. Yet, he admitted that he personally made only one call to Carrier's office. He did not personnly call or attempt to call on January 27. He testifed that he had a friend call on January 27 who told the Claimant that he left a message. This is a statement of doubtful credibility. The best evidence would have been that of the friend who made the alleged call. And there is no explanation why Claimant did not call on the 27th, since he was able to do so. Claimant did not comply with the provisions in Rule 20 and there is no basis of fact to support exemption from the notification requirement. All of the awards cited by Employes are readily distinguishable.

Employes also contend that the penalty of discharge is too severe in relation to the charge. It is immaterial that Claimant's prior work record was not entered at the investigation hearing. Carrier still has the right to consider that record for the purpose of determining the penalty. Nor is the Carrier required to disclose that record in the investigation notice.

During the processing of the claim on the property, Carrier advised the Local Chairman and later the General Chairman that Claimant's service record had been reviewed before dismissing him from service. That record has not been disputed; only its relevancy was challenged.

Claimant's personnel record prior to January 26, 1972 shows consistent absences without good and sufficient reasons. In March 1971, he was given a ten (10) day deferred suspension for continued absences and tardiness; he was given another five (5) day deferred suspension in September 1971; and he was given a thirty (30) day deferred suspension in November 1971 for the same reason.

Every employe has an obligation and a duty to report on time and work his scheduled hours, unless he has good and sufficient reason to be late, to be absent, or to leave early. Those reasons must be supported by competent and acceptable evidence. No employe may report when he likes or choose when to work. No railroad can be efficiently operated for long if voluntary absences are condoned.

Upon all of the evidence in the record, the Board finds that the Claimant is entitled to no special consideration, and that no mitigating circumstances exist which justify a modification of the penalty.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administative Assistant

Dated at Chicago, Illinois, this 7th day of June, 1974.