

The Second Division consisted of the regular members and in addition Referee Josef P. Sirefman when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(Illinois Central Gulf Railroad

Dispute: Claim of Employees:

1. That the Illinois Central Gulf Railroad violated Rule 39 of the Schedule "A" Agreement made between the Illinois Central Gulf Railroad and the International Association of Machinists, AFL - CIO, when they suspended Machinist H. M. Thompson at 7:00 a.m., December 1, 1979, and ending 7:00 a.m., January 15, 1980.
2. That accordingly, the Carrier be ordered to pay him all wages lost as a result of the Carrier's violation of the controlling agreement, including overtime losses.
3. Make claimant whole for all holiday and vacation rights.
4. Pay premiums on Travelers Policy GA 23000, Illinois Central Gulf Hospital Association, Provident Insurance Policy R-5000 and Aetna Dental Policy GD-12000.
5. Make claimant whole for all losses and clear his service record of all reference to the incident.

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.

Claimant H. M. Thompson, a machinist, lost his Mother-in-law, Aunt and Uncle in a fire. He received three days bereavement leave at the end of October, 1979 at which time his Mother-in-law was buried, returned to work on October 30th, and a few days later went out of town for the burial of his other relatives. On November 7, 1979 Claimant received a notice of investigation "to answer the charge that you were absent, without permission, on November 3, November 4 and November 5, 1979 in violation of Rule 23 in the Schedule of Rules governing the working conditions of Machinists and Rule # 6 of the General Superintendent's Regulations dated January

1, 1979." These rules deal with absence from work for any cause without permission and absenting oneself from duty without proper authority. The investigation was held on November 16, 1979 and on November 27, 1979 Claimant was given a 45 day calendar suspension commencing December 1, 1979.

A review of the record before the Board establishes that the November 7, 1979 notice of investigation provided sufficient particularity to permit Claimant to properly prepare a defense for the allegations contained therein, and that the Claimant was properly afforded all the procedures provided by the contract. Although the record is clear that on October 22, 1979 Claimant received permission from his Foreman to be absent October 27, 28 and 29, it is also clear that on October 30th Claimant, now back at work, did not directly, on that day, request further permission under Rule 23 from his Foreman for the additional days off necessary to attend the out of town burials for his Aunt and Uncle. Thus, there was substantial evidence in the record to support the Carrier's decision to discipline Claimant.

However, the 45 calendar day suspension was too severe under the circumstances. Granted that Claimant's prior record contains a significant number of related infractions. Nevertheless, the Carrier should have weighed Claimant's belief that as a result of his conversation with the Foreman on October 22nd he felt that he had permission to take the time off as needed to attend the respective burials to be held at different places and on different days; although the Foreman was given certainty only as to the three days at the end of October. Given the pressures of the tragedy Claimant was apparently mistaken as to the extent of the permission granted, but had made some attempt at prior notification. Accordingly the suspension should be reduced to a twenty calendar day suspension and Claimant is entitled to restoration of any wage loss and benefits for the remaining 25 calendar days in accordance with the contract, except that Carrier is not required to pay premiums for Health and Welfare under the Organization's Claim "4".

A W A R D

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 18th day of August, 1982.