

**Award No. 4101**

**Docket No. 3910**

**2-GN-CM-'62**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

**GREAT NORTHERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:**

1. That the Carrier unjustly suspended the Claimant from service on November 2, 1959 for a period of five days.

2. That the Carrier compensate the Claimant for five days for loss of wages as the result thereof.

**EMPLOYES' STATEMENT OF FACTS:** Carman Richard Fertterer, hereinafter referred to as the claimant, is employed by the Great Northern Ry. Co., hereinafter referred to as the carrier, as lead car inspector, West Yard, Great Falls, Montana, 12:00 M to 8:00 A. M., Monday through Friday.

The claimant was suspended from service for inability to get permission from proper authority to lay off.

The carrier does not maintain a telephone at claimant's place of work so that obtaining permission from the proper authority to lay off was impossible.

The claimant abided by the rules and instructions of the carrier plus the rule of the current working agreement provided for laying off in an emergency.

This dispute was handled with all carrier officials designated to handle disputes, all of them declined to adjust it.

The agreement effective September, 1949, as subsequently amended, is controlling.

**POSITION OF EMPLOYES:** The claimant is employed by the Great Northern Ry. Co. at Great Falls, Montana as a lead car inspector, West Yard, 12:00 M to 8:00 A. M., Monday through Friday. He has 10½ years of service with the carrier.

The carrier is entitled to some degree of stability in its working forces and it did not discriminate against the claimant in light of the claimant's record of flagrant violations of the second sentence of Rule 30."

Similar dismissals were also upheld in Awards Nos. 1666, 2087 and 2128, where employes were absent without permission and without notice. Award No. 2128 was rendered without a referee. In light of the foregoing a suspension of five days certainly was not excessive, capricious or an abuse of discretion.

**THE CLAIM OF THE ORGANIZATION, THEREFORE,  
IS WITHOUT MERIT FOR THE FOLLOWING REASONS:**

1. The investigation clearly establishes that the claimant was absent without permission from his Wednesday, October 14 and Thursday, October 15 shifts, and that he failed to give the night car foreman any definite advance notice of his inability to work on those shifts. The testimony of the night car foreman to this effect was substantiated by the claimant's own testimony and that of his own witness.

2. The inexcusable failure of the claimant to give the night car foreman reasonable advance notice of his inability to work his shift, was a direct violation of the basic obligations of an employe to his employer.

3. The action of the claimant resulted directly in increased overtime expense to the carrier in providing relief to fill his assignment; and impaired the ability of the third trick train yard inspection force to carry out their work in an efficient and expeditious manner.

4. The organization has acknowledged that the investigation was held in a fair and impartial manner. The organization has also admitted that the claimant was guilty of being absent from his assigned shift without permission, and without giving reasonable advance notice of his inability to report. The sole contention of the organization is that the discipline assessed the claimant was excessive.

5. It is the carrier's prerogative to determine the proper measure of discipline necessary in order to impress upon the claimant his obligation to comply with the carrier's rules. This Board may not reverse a carrier's decision unless it finds that the carrier's action was arbitrary, capricious and an abuse of the discretion invested in management.

For the foregoing reasons, the carrier respectfully requests that the claim of the organization be denied.

**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 were given due notice of hearing thereon.

The Claimant, R. Fertterer, has been employed by the Carrier as Chief Freight Car Inspector at Great Falls, Montana. At the time here relevant, his regular work schedule was from 11:59 P. M. to 8:00 A. M., Monday through Friday. Shortly after midnight of Tuesday, October 13, 1959, the Claimant told Night Foreman H. Larson that he might not report for work the following night (Wednesday, October 14, 1959) because he intended to go to Butte, Montana, for personal reasons, but "wouldn't know for sure". The Claimant did not report for work on Wednesday, October 14, 1959. At about 11:50 P. M. of the following night (Thursday, October 15, 1959), Freight Car Inspector E. E. Erickson, a fellow employe of the Claimant, reported to Larson that the Claimant's wife had telephoned him and said the Claimant "wasn't home yet". The Claimant did not report for work on said night. In both instances, Larson waited until after midnight to find out whether or not the Claimant would report for work and then assigned a car inspector from the preceding shift to work overtime in place of the Claimant.

After a formal hearing, the Carrier imposed a five-day disciplinary suspension upon the Claimant. He filed the instant grievance in which he contended that he was unjustly suspended. He requested compensation for the loss in wages suffered by him. The Carrier denied the grievance.

Rule 10 of the applicable labor agreement reads, as far as pertinent, as follows:

"An employe unavoidably detained from work will not be discriminated against. Unless prior notice of expected absence has been given, notice to foreman must be given as quickly as possible, and failure to do so . . . will be considered cause for investigation and discipline." (Emphasis ours.)

The available evidence convincingly proves that the Claimant did not give prior notice of his absence on October 14, 1959, as required under Rule 10. His statement that he might go to Butte but was not sure whether he would actually go was merely a vague indication that he possibly might not report for work. It was not a definite "notice of expected absence" within the contemplation of Rule 10. At the investigation hearing, Foreman Larson testified that he did not give the Claimant permission to be absent on the night in question. Thus, the Claimant failed not only to give due notice pursuant to Rule 10 but also absented himself from work without proper permission of his foreman.

Regarding his absence from work on the second night (Thursday, October 15, 1959), the Claimant asserts that the message relayed by Erickson to Foreman Larson was apparently misunderstood. He submits that he had strained his ankle on Thursday and that, although it did not bother him much in the beginning, by that evening he could no longer walk, and that his father drove him about five miles to the house of a friend where he soaked his foot in Epsom salt. He submits, therefore, that his wife's message that he "wasn't home yet" did not mean that he had not returned from Butte but only that he had not yet returned from his friend's house. Even if one assumes that the Claimant's version is correct, he was not relieved from notifying Larson of his inability to report for work by use of all reasonable available means "as quickly as possible" in accordance with Rule 10.

It is undisputed that Foreman Larson could not be reached by telephone after 5:00 P. M. Yet the record discloses that the Yard Office is located approximately 500 feet from Larson's shack and has 24-hour telephone service.

We fail to comprehend why the Claimant did not make use of this service in an effort to notify Larson of his expected absence sufficiently in advance. The record also reveals that the Claimant passed within a short distance (approximately one-half mile of Larson's shack when his father drove him about five miles to his friend's house. No explanation has been offered by the Claimant why he did not use this opportunity to notify Larson of his inability to report for duty so that the latter could have made timely arrangements for a relief man. In summary, we hold that the Claimant also violated Rule 10 on October 15, 1959.

The Carrier's right to take disciplinary action against the Claimant under these circumstances cannot be doubted. We have consistently held that a disciplinary penalty imposed upon an employe can successfully be challenged before this Board only on the ground that it was arbitrary, capricious, discriminatory, excessive, or an abuse of managerial discretion. See: Awards 3874 and 4000 of the Second Division. We are satisfied that the Claimant's five-day suspension was not founded upon any of such untenable bases. He failed twice to comply with his contractual obligation under Rule 10. He was not discriminated against as claimed by him. His suspension was a reasonable exercise of the Carrier's managerial discretion.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 5th day of December, 1962.