Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8937
Docket No. 8740
2-ICG-MA-'82

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

Parties to Dispute: International Association of Machinists and Aerospace Workers

Illinois Central Gulf Railroad Company

Dispute: Claim of Employes:

1. That the Illinois Central Gulf Railroad violated the schedule "A" agreement between the Illinois Central Gulf Railroad and the International Association of Machinists - AFL - CIO, particularly Rule 39 of the agreement when they suspended machinist P. A. McKinney from service for a period of ninety (90) days, beginning September 9, 1978 through December 7, 1978.

2. That accordingly, the carrier be ordered to pay Mr. McKinney all wages lost in accordance with Rule 39, including overtime; make claimant whole for all holidays lost during the period of his suspension; pay the claimant six percent (6%) interest on all earnings lost as a result of his suspension; and in addition, that his record be cleared of any reference to the investigation and discipline rendered as a result of the investigation conducted August 29, 1978, in accordance with the applicable provisions of Rule 39 of the schedule "A" agreement, dated April 1, 1935, as amended.

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.

On August 21, 1978, the Claimant was notified to attend an investigation concerning a charge that he was absent without permission on August 14, 15, 16 and 18, 1978.

Subsequent to the investigation, the Carrier assessed a ninety (90) day suspension on the Employee.

Rule 23 of the agreement between the parties specifies that an employee shall not absent himself from work for any cause without first obtaining permission from his Foreman, if possible, except in the case of sickness, when the employee must notify the Foreman as soon as possible.

Noting that the rule mentioned above permits an application of a rule of reason, the Employee argues that when he absented himself on the four days in question, it was due to a "total failure of his automobile while he was visiting his brother in a different geographic location" (a distance of more than 100 miles from his work site).

At the investigation, the Claimant testified that he experienced the difficulty with his automobile on August 14, and on the 15th and 16th he was waiting for parts that had to be ordered; but he attempted to call his mother at home so that she could notify the company, however he was unable to contact anyone at his home.

On August 15, the Claimant contacted "a lady"; told her of his troubles and requested her to call the Carrier and let them know of the difficulty. He testified that the lady reported to him that she did make contact. She verified that information.

Moreover, the Employee states that his absence on August 17 was occasioned by the same event, and the fact that the Carrier did not charge him with absence without permission on that date reflects irregularity and vague application of Rule 23.

The Carrier states that the record establishes that the Claimant called in on August 17 concerning his inability to return, and thus he was not charged with absence without permission on that date. Moreover, the Carrier insists that alleged car trouble does not represent a "mitigating circumstance", as provided for under Rule 23, and clearly would not exempt the Claimant from an obligation under the rule to request permission to be absent.

We have noted certain confusion in the record. For instance, the individual who received the telephone call on August 17 did not appear at the investigation, which precluded a recitation of the exact words received, because there is an implication that the message on the 17th could have been broad enough to suggest a continued absence on the 18th, as well. Further, the "lady" referred to by the Claimant did appear and testify, and she indicated that she did contact someone and delivered the message on August 15 concerning the Employee's absence, although the Carrier stated that it had no record of any such call being received.

A suspension of 90 days represents a deprivation of one quarter of an individual's annual salary, and is not a disciplinary matter to be considered lightly. At the same time, we recognize that this Claimant has had prior disciplinary difficulty with the Carrier.

Unquestionaly, the Employee should have taken steps to notify the Carrier himself, rather than trying to contact his mother and then a friend; yet, at the same time, we cannot automatically discard the testimony that the Claimant's friend did notify someone in the Company.

Under all the circumstances, we find that the Employee did have an obligation of notification, which he ignored, and disciplinary action was warranted. However, we question that a 90 day suspension was appropriate under the circumstances. Accordingly, we will reduce the suspension to thirty (30) days.

A W A R D

Claim sustained to the extent that we disapprove anything beyond a thirty (30) day suspension.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 3rd day of March, 1982.