Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9041
SECOND DIVISION Docket No. 9109
2-NRPC-EW-'82

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(National Railroad Passenger Corporation

Dispute: Claim of Employes:

1. That The National Railroad Passenger Corporation (Amtrak) errored and violated the contractual rights of Electrician D. F. Moore when they suspended him from service, without pay, for a period of fifteen (15) days commencing June 3, 1979, as a result of an investigation held on May 22, 1979.

2. That The National Railroad Passenger Corporation (Amtrak) further errored and violated Electrician Moore's contractual rights by activating a ten (10) day deferred suspension.

3. That, therefore, Electrician Moore be returned to service and compensated for all lost time including holidays and overtime.

4. That he be made whole for health and welfare benefits, all vacation rights, pension benefits, unemployment and sickness insurance, and all other benefits, not specifically mentioned herein that he would have received or would have earned had he not been suspended from service.

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, Mr. Moore, was notified by letter dated May 2, 1979 to appear for an investigation on May 11, 1979. The charge read:

> "Violation of Rule K of the National Railroad Passenger Corporation in that you were absent from your position as an electrician at the Eighth Street Yards on April 13, 1979, without permission."

By agreement, the investigation was postponed and eventually held on May 22, 1979. Following that appropriate conducted hearing, the penalty herein complained of was assessed.

There is no controversy regarding the events which transpired on the day in question. Claimant testified that on the day in question he called his supervisor at approximately 7:50 A.M. and requested permission to be absent from work because he was having difficulty with his personal life. He explained that his girl friend was having problems which required his immediate attention. Further, he explained that she was sick and just being there gave moral support. His supervisor informed him that he would not grant permission to be absent for the reasons cited and that if Claimant did not come to work he would be considered absent without permission.

The foregoing testimony agrees in all pertinent respects with the testimony of the supervisor.

The gravamen of the Organization's defense resides in a claim that the Carrier utilized Rule K whereas the negotiated Rule 28(a) takes precedence over company Rule K and should have been applied. It claims that under Rule 28(a), Mr. Moore's absence constituted an emergency and, therefore, the Carrier erred in assessing penalty.

Rule K reads:

> "Employees must report for duty at the designated time and place, attend to their duties during the hours prescribed and comply with instructions from their supervisor."

Rule 28(a) reads:

> "Employees shall not absent themselves from their assigned positions for any cause without first obtaining permission from their supervisor. In case of sickness, emergencies or when the supervisor cannot be located, they shall notify their supervisor or another person in authority as soon as possible." (Emphasis added)

The rules are not in conflict. It is clear that Mr. Moore was denied permission to be absent. He admitted that he gave no medical service to his girl friend. Even if Rule 28(a) is utilized, we find no fault with the decision of the supervisor that the conditions described did not constitute an emergency warranting absence from work. One can readily imagine the mischief which might accrue in the work force if each individual had the right to claim emergency and be absent from work.

In view of the foregoing and the entire record, we find no reason to upset the judgment of the Carrier.

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A W A R D

Claim denied.

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 21st day of April, 1982.