Award No. 5140
Docket No. MW-5120

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the effective agreement when it suspended B&B Mechanic J. G. Mock from service for a period of ten days in August, 1949;

(2) That B&B Mechanic J. G. Mock be compensated for the wage loss suffered because of his suspension for the period referred to in part (1) of this claim.

OPINION OF BOARD: This case comes before the Board for review of disciplinary action of the Carrier on claim of the Petitioner that Claimant be compensated for the wage loss suffered because of his alleged wrongful suspension from service for a period of ten days in August.

J. G. Mock, employed as Mechanic in B&B gang under Foreman J. L. Davis, failed to report for duty or to secure permission to be absent from duty Thursday, August 11, 1949, and continued to be absent from duty, without permission, until Monday, August 15, 1949, when he reported for work but was not permitted to resume service and continued out of service pending investigation and hearing on August 22, 1949.

There is sufficient evidence in the record on which to base a finding that Claimant was ill; so all that was required of him under Rule 29 of the Collective Bargaining Agreement, which the Board finds controlling, was to notify his foreman as soon as practicable. This the Board finds he did not do.

The evidence shows that he procrastinated for the assigned reason that he thought he would be able to return to work from day to day. Nevertheless, there is no good reason shown why the employe could not have let his employer know of his illness. The Carrier was entitled to that much information

at least, even though it might have remained indefinite as to when the employe could return to work. It does not appear that Claimant was bedfast or totally incapacitated, or that the normal and usual lines of communication were not open to him. Accordingly, we hold that the Carrier was justified in reasonable and proper disciplinary action.

There remains, however, the question of whether the disciplinary measures invoked were just and proper. The Board is of the opinion that action taking employes out of service, more or less as a matter of routine, pending hearing and decision on alleged rules' violations, which are not aggravated or serious per se, is inappropriate, hasty and ill-advised. This Carrier seems to misconceive the true purpose and intent of Rule 1, Article 21, of the Agreement, as it pertains to suspension of employes, pending hearing and decision, based on charges of misconduct.

It would appear to be a reasonable construction of the rule to say that only in cases involving charges of moral turpitude, safety violations, and other gross misconduct, should the employe be taken out of service before the hearing and decision. It is the evident purpose of the rule to maintain the status quo of employes, so far as possible, until the hearing, so that his rights will not be prejudiced by precipitate action, and the employer will not be confronted with charges of inflicting punishment to off-set monetary losses confronting it, should the earlier action be overruled.

We believe the parties appreciate the need for protecting their hearing procedures, and decisions of management based thereon, from charges that the employe did not have a fair and impartial hearing. By agreement they introduce into their relations the democratic processes that only after hearing and "conviction" is one guilty of the offense charged. Therefore, meticulous care should be taken to avoid any claim that the guilt of the accused has been prejudiced. Thus, the need to maintain the status quo, as far as possible, until both sides of the controversy have been heard and a fair and impartial decision rendered.

For the reason we believe the Carrier violated the agreement, when it suspended Claimant before a hearing and a decision, that part the disciplinary action cannot stand. Therefore, the aggrieved employe is entitled to be paid for that period when he was wrongfully held out of service.

On the basis of the above and foregoing, we held that Claimant is entitled to recoup the losses sustained by his premature suspension and that he should be paid what he would have earned up to Aug. 23, 1949, less what he may have been paid for his services in other work or through unemployment compensation.

Objections to the Board's jurisdiction have been noted and overruled. No objections were made by either party to handling the claim on the property, until the case reached this Board. Through all steps of the grievance procedure, the claim was entertained and a decision made on the merits. The objections now come too late.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement to the extent indicated in the Opinion.

AWARD

Claim (1 and 2) sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 13th day of December, 1950.