

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

MAINE CENTRAL RAILROAD COMPANY

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

(1) The Carrier's action in suspending Crossing Tender J. L. Roy from service for six working days and in assessing his record with 25 demerit marks was unjust, unwarranted and without just sufficient cause.

(2) The personal record of Crossing Tender J. L. Roy be cleared of the aforesaid 25 demerit marks and that Crossing Tender J. L. Roy be reimbursed for the exact amount of monetary loss suffered as a result of the aforesaid improper suspension.

OPINION OF BOARD: This is a dispute between The Brotherhood of Maintenance of Way Employees and The Maine Central Railroad Company.

Claimant was assigned as Crossing Tender. He worked the third trick. He was supposed to relieve the man working the second shift at 10:00 P. M. He failed to do so. The Carrier was not given notice that he would be unable to work.

Claimant fell down in his home about 2½ hours before he was supposed to work. Claimant asked his brother-in-law to notify the Carrier that he would be unable to work. This notice was not given. Claimant was suspended and given a hearing. He was suspended four to six days (Record not definite) and assessed 25 demerit marks.

"Rule 13(a)

An employe who has been in service more than sixty (60) days, shall not be disciplined or dismissed without a fair and impartial hearing by a designated officer of the Company, and shall previously be apprised of the charge against him. He shall have a reasonable opportunity to secure the presence of witnesses and have a right to be represented by counsel of his own choosing. If the charges against him cannot be sustained he shall be compensated for his wage loss,

if any. In proper cases employees may be suspended pending hearing, which shall promptly follow charges. The hearing will be held within ten (10) calendar days of date when charged with the offense or held out of service. Decision will be rendered within ten (10) calendar days after completion of hearing."

This Rule states that in proper cases the employee may be suspended pending hearing. This is not a proper case. There would be no danger to allow the Claimant to continue to work. Therefore, Claimant should be paid for the day or days suspended prior to the hearing.

We are of the opinion that the Carrier was well within its rights in the rest of the discipline. The Claimant had a responsibility to notify the Carrier if he was unable to work. **This responsibility cannot be delegated.** There was no contention by the Claimant that the injury so affected him that he did not realize that responsibility. On the other hand he was fully aware of this duty. He asked his brother-in-law to do this for him.

For the foregoing reasons we believe there was a violation of the Agreement.

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 Employees involved in this dispute are respectively Carrier and Employees 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 Agreement was violated.

AWARD

Claim sustained in part as expressed herein.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September, 1962.