

Award No. 13983

Docket No. MW-13940

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

P. M. Williams, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY
(System Lines)**

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

(1) The Carrier violated the Agreement when it suspended Section Laborer L. M. Henthorne from service for nineteen (19) working days without just and sufficient cause.

(2) The Carrier violated Rule 23, particularly the mutual interpretation theretofore placed thereon and practices thereunder, when, subsequent to instead of concurrently with the giving of notice of investigation to the claimant, it suspended said claimant from service pending results on an "investigation".

(3) The Carrier now be required to reimburse Claimant Henthorne for the monetary loss of nineteen (19) days' earnings suffered account of said violation.

OPINION OF BOARD: At the conclusion of work on April 11, 1962, Claimant and his foreman exchanged words indicative of a major disagreement. It is not disputed that Claimant failed to report for work the following day, nor that he failed to notify Carrier of his impending absence and the reason therefor.

On April 12, 1962, Claimant's foreman processed a "Change in Force" report to the effect that Claimant had quit. The next day, per the record, Claimant reported for work as usual. He was held out of service. By letter dated April 16 he was notified of a formal investigation to be held April 20 — (postponed to April 27 at Claimant's request) — "to determine facts and place responsibility — for being insubordinate to Section Foreman . . . and absent without leave. . . . You are charged with violation of Special Rules 700 and 702. . . ."

By letter dated April 18 Claimant was advised that "You are being held out of service pending results of this investigation." This letter also granted the one week postponement previously requested.

As a result of the hearing it was determined that the Claimant had violated Rule 702 (absence without proper authority) and by letter dated May 11 he was notified that he was "assessed nineteen working days, actual suspension, which time you have served from April 13, 1962 to and including May 9, 1962."

The claim presented states (1) that Claimant was suspended for 19 working days without just and sufficient cause; (2) that Rule 23 was violated by Carrier, particularly the mutual interpretation placed thereon, when it did not notify Claimant of his suspension at the time it charged him with the violation, i.e., within five days of the event giving rise to the disciplinary action; and, (3) reimbursement for time lost is requested.

A careful reading of this record fails to disclose that Carrier's action was anything other than a use of its reserved managerial discretion to discipline its employees. We find no evidence that Claimant was not guilty of violating Rule 702. His testimony at the hearing concerning illness as the reason for his absence was in mitigation and cannot be used by us as a basis for reducing the penalty.

We find no language in Rule 23 which would require Carrier to notify Claimant in writing and within five days of April 11, 1962, that he was suspended pending investigation. Neither do we find a requirement that the notice of suspension be given concurrent with the notice of investigation.

We are of the opinion that the claim should be denied.

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 not violated.

AWARD

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1965.