

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19875
Docket Number CL-19697

C. Robert Roadley, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employee
PARTIES TO DISPUTE: (
(George P. Baker, Richard C. Bond, **Jervis Langdon, Jr.**,
(and Willard Wirtz, **Trustees** of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7124)
that:

(a) The Carrier violated **the Rules Agreement**, effective February 1, 1968, particularly Rule 6-A-1, when it **assessed** discipline of actual suspension for thirty calendar days on H. L. Wilmer, Tractor Operator, Locomotive **Shop**, Wilmington, Delaware.

(b) The assessing of discipline of suspension for thirty days was, **under** the circumstances involved, a" abuse of managerial authority, and was both arbitrary and capricious.

(c) Claimant **Wilmer's** record be cleared of the charge.

(d) Claimant **Wilmer** now be compensated for **the wage loss** sustained during the period out of service, plus interest at the rate of 6% per annum, **compounded daily**.

OPINION OF BOARD: This is a discipline case wherein the claimant **was** given a thirty day suspension for leaving his assigned duties **without** permission. The record shows that claimant, a Tractor Operator in the Locomotive Shop, had sustained a" on-duty injury prior to the date of the subject incident, was still under the care of the company doctor, and had been given a prescription for medicine to be taken to relieve pain as it **occurred**. On the date involved in this case the claimant took some of the **medicine** and, allegedly feeling drowsy as a result thereof, went to his car to rest and fell asleep for the remainder of his tour of duty. It was this absence from duty that brought about the discipline.

An **investigation** was held **during which** claimant made the following statements in answer to questions posed by the hearing officer:

"I am under the Doctor's care strictly **and the medicine** I take **sometimes** causes a lot of trouble. In other words it makes you doze. You can't help yourself. **There** is nothing you can do about it. If I go **somewhere** and sit down and try to get rid of this feeling. It is necessary to take the medicine account of **the injury.**"

Claimant also stated:

"I did not leave the property. I went to my car and sat down and tried to get feeling off and overstayed my time because when you are hurt you must take something."

The investigation also brought out the fact that the **claimant's supervisor** was aware of claimant's physical condition and knew that claimant was under the care of the company doctor.

In it's submission to this Board the Carrier stated:

"If the Claimant had received permission to leave his assignment, then the Carrier would have no cause to discipline him."

On this point, the following question was asked of claimant during the **investigation:**

"Q. Mr. **Wilmer**, on April 5, 1971, when you claimed you were feeling ill, why didn't you inform somebody to come and tell us of your condition so we could get you help:

A. I did not see anybody. I have asked a person to do it and you can't rely on them that's all."

These referred to statements by claimant were not refuted by the Carrier. On the contrary, it is clear that the Carrier was aware of claimant's situation. Insofar as the effect of the medication is concerned, it was not until after the investigation was concluded that the Carrier, by letter to the General Chairman dated June 29, 1971, stated, in pertinent part, "Mr. Wilmer alleges that the medication prescribed by a Company Physician to relieve the pain resulting from an accident tends to make him sleepy. In that connection, we requested an opinion from the Medical Officer which indicates that the medication prescribed should not have made him drowsy unless he took an overdose." (Emphasis added) This statement carries the inference that under certain **circumstances** the medication could, in fact, produce the results alleged by claimant.

The only basis for assessing discipline in this case was that, apparently regardless of the circumstances, the claimant did not obtain permission to leave his assignment. It is significant to note that claimant did not leave the Property during the period in question.

The record also reveals that the claimant was last disciplined by the Carrier on April 1, 1954, leaving the presumption that during the seventeen (17) years subsequent to such discipline claimant has been a satisfactory employee.

Based upon a thorough review of the record ~~before~~ us ~~we~~ find that, under ~~the~~ circumstances in this particular case and in view of the claimant's employment record spanning the past seventeen-odd years, the discipline assessed was unreasonable and arbitrary, and that the record does not contain sufficient evidence to support the Carrier's action. We will therefore sustain the claim with the exception of that portion of Part (d) of the ~~claim~~ pertaining to the payment of interest at the rate of 6% per annum. This Board has held on many occasions that a claim for interest, unsupported by Rule, should not be given consideration and we will, therefore, deny that portion of the claim. See Award 15709 among others.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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~~ action of the Carrier ~~was~~ unreasonable and arbitrary.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ~~ADJUSTMENT~~ BOARD
By Order of Third Division

ATTEST: A.W. Parker
Executive Secretary

Dated at Chicago, Illinois, this 27th day of July 1973.