

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20168

Docket Number MW-20046

Frederick R. **Blackwell**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(The Illinois Central **Gulf** Railroad Company
((former Illinois Central)

STATEMENT OF CLAM: Claim of the System **Committee** of the Brotherhood that:

(1) The suspension of Track Laborer L. S. Allen, Sr. for thirty (30) calendar days for alleged insubordination on June 28, 1971 was without just and sufficient cause and on the basis of unproven charges (System File **La-107-T-71/Case 789**).

(2) The charge be stricken from the claimant's record and payment be allowed to Mr. Allen for the assigned working hours lost in conformance **with** Rule 25(i).

OPINION OF BOARD: This is an appeal from Carrier's suspension **of Claimant**, a **Trackman**, for a period of thirty (30) calendar days. The suspension (which included days held out of service pending investigation) **was** issued after hearing and findings of guilt on the charge of insubordinate conduct towards a Track Supervisor on June 28, 1971. The Petition asks that the suspension be voided and that Claimant be reimbursed for lost earnings in accordance with Rule 25 (i).

The hearing record shows that, on the date in question, the Claimant, the Rack Supervisor, and others were engaged in re-locating and **removing** track. During the process the Claimant failed to lift a rail on signal and the Track Supervisor gave him a verbal instruction to lift. A verbal exchange between the Track Supervisor and the Claimant resulted. Three Carrier witnesses, the Rack Supervisor, the Foreman, and a Laborer, testified that **Claimant** did not comply with the Track Supervisor's instructions. The Claimant and four other Laborers testified that a signal bond wire, which had not been cut as required in order to lift a rail, was holding the end of the rail and, in consequence, the instruction to lift could not be carried out.

The foregoing, and other evidence in the hearing record, provides sufficient evidence to support a finding of guilt. However, the record before us also shows that Claimant had thirteen (13) years of service with the Carrier and, but for the instant discipline, he

has a clear service record. Accordingly, in the context of the entire record, we believe that the penalty of thirty (30) calendar **days'** suspension was unreasonable and excessive. We shall therefore reduce the discipline to fifteen (15) calendar days suspension, which we are satisfied is the proper measure of discipline in light of all the circumstances. Consequently, we shall not disturb the first fifteen (**15**) calendar days of the suspension but we shall award that Claimant be paid for earnings lost during the remaining part of the suspension in accordance with Rule 25(i).

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

The discipline was excessive as **per** Opinion.

A W A R D

Claim sustained to the extent that Claimant shall be reimbursed by Carrier for earnings lost during the last fifteen (15) calendar days of the suspension.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **15th** day of March **1974**.