

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20198  
Docket Number MW-20184

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(The Kansas City Southern Railway Company

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

(1) The suspension of four (4) days Imposed upon Laborer Albert Como, Jr. was unwarranted and in violation of the Agreement (System File 013.31-115).

(2) The personal record of the claimant be cleared of said suspension and he be allowed thirty-two (32) hours of pay at his straight time rate in accordance with Rule 13-2.

OPINION OF BOARD: This discipline case is similar to the one in Award 20197 in which an absence due to sickness led to 8 four day suspension under Rule 5.1 of the Agreement and Rule 25 of Carrier's Rules and Instructions. Here, the absence leading to discipline was allegedly caused by a disabled automobile. In both dockets the Claimants were absent on Monday, a work day, under 8 rule which required employees to give notice to Carrier of the reason for an absence not later than "the close of the third day they are unable to report." (Pale 5.1 of the Agreement) By using calendar days, which included the two rest days prior to Monday, the Carrier concluded that the Claimant's giving notice on Tuesday was the fourth day and therefore not in compliance with the rule. The Employees say the Tuesday notice was satisfactory because the rule refers to work days rather than calendar days.

In accord with our Opinion in Award 20197, we shall first state that Rule 5.1, being an Agreement Rule, is paramount to Rule 25 which is 8 Carrier unilateral operating rule. We also conclude that work days are contemplated by the three-day notice provision of Rule 5.1 and, thus, we reject Carrier's theory that the period for notice is computed by reference to calendar days, including rest days. Rule 5.1 reads as follows:

"Employees will not lay off without obtaining permission from their immediate superior, except on account of sickness or for other good cause, in which event they shall notify their immediate superior not later than the close of the third day they are unable to report. Except also that foremen will notify their superiors immediately, preferably in advance, in order that relief may be provided."

We come now to the facts of this case as reflected in the hearing record. The **Claimant** here, like the **Claimant** in Award 20197, worked on Friday, October 29, 1971, **observed** rest days of Saturday **and** Sunday, and, without notice to Carrier, did not report for work on Monday, November 1. When he reported for work on Tuesday, he was given a written suspension of four days **for** laying off without **permission**. The reason **for** suspension, 8s testified to by his For-, was that: "He had missed over three days. He reported back the fourth day." The Foreman also said that Claimant gave sickness **as** the reason **for** the **absence**. However, the Claimant denied this, **saying** that he had had car trouble and that he had no money to **cab** to work. Carrier's **Roadmaster** confirmed **that**, a few days after the absence, the Claimant **had** said car trouble had caused the absence.

In appraising the foregoing, and the whole record, we conclude that Claimant's absence **was** due to **car trouble**. Despite Some testimony that **Claimant** had changed his story from sickness to **car trouble** as the cause of **absence**, **Claimant's** statement about car trouble was never seriously challenged by the Carrier. We conclude further that Claimant gave Carrier notice of his **car** trouble within the **time** limit of Rule 5.1, for, 8s previously indicated, the three-day notice provision of the rule refers to work days rather **than** to calendar days. Consequently, Claimant's giving notice to **Carrier** on the **day** following his absence constituted compliance with the rule. Finally, we note that, while the suspension was **initially** based on Carrier's calendar day theory, the Carrier also contends that Claimant's car trouble was not "good **cause**" within the meaning of Rule 5.1. We reject this contention also. In the absence of 8 clear showing of alternate transportation to work, it could not reasonably be said that car trouble is not good cause for **a** one-day absence from work. The role of the **automobile** in American work life is too **well known** to require discussion.

In **view** of the foregoing, we **shall** sustain the claim.

**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;

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

The Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A. W. Paulos*  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1974.