

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20364
Docket Number MW-20331

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: [Brotherhood of Maintenance of Way Employees
(The Illinois Central Gulf Railroad

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

(1) The sixty (60) day suspension of Section Laborer J.E. Robinson was without just and sufficient cause and wholly unwarranted (System File MI-175-T-72/Case No. 825 MofW).

(2) The personal record of Section Laborer J. E. Robinson be cleared of the suspension and he be compensated for all wage loss suffered, all in accordance with Rule 25 (I).

OPINION OF BOARD: On March 17, 1972, Claimant failed to report for duty. Carrier conducted an investigation and subsequently suspended him for sixty (60) days.

The Organization alleges that Claimant's rights were prejudiced because the Hearing Officer considered his prior record at the investigation. We do not concur with Claimant's contention. It has been determined on a number of occasions, that a Carrier may review a Claimant's record - not for the purpose of determining guilt - but in assessing the discipline to be imposed. See, for example, Award 18550 (O'Brien). In any event, the notice of investigation advised that Claimant's "personal" record "...may be reviewed at this investigation." At the investigation, the "personal" record was reviewed for consideration of the "...measure of discipline, if any, which may be assessed in this case." No objection was raised at the investigation. Accordingly, we will consider the matter on its merits.

Claimant concedes that he did not report for work on March 17, 1972, nor did he advise his Foreman, or anyone in authority, that he would be absent.

Claimant testified that his wife had been ill and hospitalized, and that it was necessary for him to remain at home on March 17 because of her condition. There is some testimony that Claimant advised supervisory personnel that he took his wife to obtain medical treatment on March 17, but he stated that he drove his wife to his mother's residence on that date. However, the record is clear that he did not attempt to notify anyone in authority of his situation, or his pending absence on the

day in question. While there may have been certain mitigating circumstances present, we feel that Claimant had a duty to attempt to contact the Carrier to advise of the circumstances. This he failed to do, and we conclude that his inaction deserved appropriate disciplinary action.

We are not, however, prepared to rule that a sixty (60) day suspension was warranted in this case. Carrier suggests that the Organization's argument seeks "leniency" and that this Board is precluded from considering such a claim. While this Board may not grant a leniency plea, we may consider if disciplinary action is unreasonable or excessive. See, for example, Awards 18603, 10582 and 11914.

We have noted that on the property, and in its Submission to this Board, Carrier has relied on Claimant's past record as a basis for its imposition of a sixty (60) day suspension. We have reviewed Claimant's record as introduced at the Hearing. Most of the record deals with personal injuries suffered by Claimant while in Carrier's employ, but the record does not specify if Claimant caused these injuries or if he was an innocent victim. However, the record does show that in October, 1971, Claimant was advised:

"It has been brought to my attention that you have continuously absented your self from your duties as Section Laborer and for no apparent reason.

"This is in violation of the Rules for the Maintenance of Way and Structures.

"If you continue to violate these rules it will be necessary that disciplinary action be taken."

Yet, the record does not advise of the number of absences or their durations. While we have determined that discipline is warranted, under the limited record before us, we feel that a sixty (60) day suspension is excessive. We will approve a thirty (30) day suspension.

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; and

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

That the Agreement was violated.

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Claim sustained to the extent stated **in** the Opinion.

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

ATTEST: *A. W. Paulos*
Executive Secretary

Dated at Chicago, **Illinois**, this 23rd day of August 1974.