

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION :

Award Number 21433
Docket Number MW-21.350

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Chicago and Eastern Illinois Railroad Company

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

(1) The suspension of sixty (60) days imposed upon Track Laborer R. Price 'for failure to protect your assignment May 13, 14 and 15, 1974' was excessive and wholly disproportionate to the offense with which charged (System File M-214-42).

(2) Track Laborer R. Price be compensated for all wage loss suffered.

OPINION OF BOARD: This is a discipline case in which Claimant was assessed a sixty day suspension for failure to protect his assignment for three days. The basic facts are not in dispute. Claimant was arrested and was in jail May 13, 14 and 15, 1974. Carrier was not notified of his absence or the reason therefor until after working hours on May 15th. At that time Claimant appeared at Carrier's depot to pick up a pay check. Upon appearing he was accosted by his foreman and the roadmaster who inquired as to his absence. At first he indicated that he had been sick; after a few minutes, after a newspaper clipping concerning his arrest was produced by the roadmaster, he admitted that he had not been sick but had been in jail. The record does not reveal when he was released from jail. Claimant testified that he was restricted to two telephone calls in the jail and had called his father to arrange bail and also called his attorney. He stated that he had asked his father to notify Carrier of his absence but apparently this had not been done. There was no corroboration of these aspects of Claimant's testimony.

Petitioner's sole contention with respect to this dispute relates to the quantum of discipline assessed. It is argued that Claimant had no previous record of discipline and that the sixty days was unreasonable and out of proportion to the three days' absence.

Carrier points out that being held in jail is not justification for unauthorized absence (and cites a number of prior awards in support of this contention). Additionally, it is urged that not only were there no extenuating circumstances, but Claimant lied initially as to the reasons for his absence; it is contended that dismissal would not have been unreasonable under the circumstances.

There is no question of Claimant's guilt in this case. Further it is apparent that he made no attempt to notify Carrier of his problem upon his release from jail - but waited until he was confronted at some later time on Carrier's property by officers of Carrier. **Over the years** we have held that, as stated in Award 10571:

" the Board has considered that discipline is a prerogative and discretionary power of management and has followed the well established rule that the Board may not interfere with such disciplinary action unless it clearly appears that it is unjust, unreasonable, capricious or arbitrary."

We find nothing in the record of this dispute to support the contention that the discipline assessed, under all the circumstances, was harsh or unreasonable. The Claim, therefore, **must** be denied.

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;

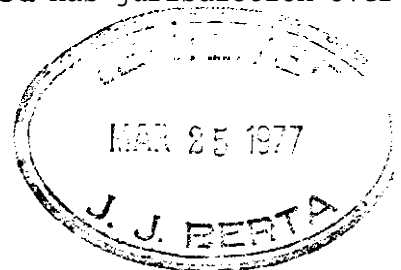
That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

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

That the Agreement was not violated.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paulson*
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1977.