

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **21523**
Docket Number **MW-21502**

Robert **J. Ables**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Burlington Northern Inc.)

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

(1) The suspension of **Sectionman S. L. Frye** for thirty days was without just and sufficient cause and, as a consequence thereof (System File **S-P-113C/MW-20 2/20/75**)

(2) The provisions of Agreement Rule **40(G)** shall now be applied to Claimant Frye.

OPINION OF BOARD: Claimant S. L. Frye was suspended for thirty days for violating Rule 702. This rule provides:

"Employees must report for duty at the designated **time** and place. They must be alert, attentive and devote themselves exclusively to the company's **service** while **on** duty. They must **not absent** themselves from duty, exchange duties with or substitute others in their place, without proper authority."

Claimant admits that he did not report to work on a shift starting at 7 a.m. as a section man on August 14, 1974 and that he did not advise anyone in management that day that he would be absent.

Claimant believes, however, that the suspension for thirty days was without just and sufficient cause and that, in any event, the discipline imposed was unduly harsh and thus excessive for the offense.

It is undisputed that while preparing to come to work on the **morning** of August 14, 1974, the wife of the claimant cut her arm on a broken window pane which required claimant taking his wife immediately to the hospital for necessary attention and required stitches. After bringing his wife home from the hospital shortly after 9:00 a.m., **claimant** called the office of Mr. **J. Lihudis**, Assistant Superintendent of Roadway Maintenance but no one answered this call and claimant did not call again. Also claimant **admits** that he did not call his foreman **Pipkin**, **supervisor Tenerelli** or the chief train dispatcher **to** leave a message about **being** late or absent.

According to claimant, he called Lihudis instead of his **supervisor** because he **knew** that the supervisor was already off on the property and could

not be reached by telephone and he did not call foreman **Pipkin** because the foreman had previously told claimant not to bother to call at all if he was late. Claimant did not leave a message with the train dispatcher because on a previous occasion when he had left a message for **Tenerelli**, the supervisor did not get the message until the next day.

A railroad can be run **efficiently** only if each employe does his required job. For good reason, Rule 702 requires employes to report on time and be ready to do required work.

However claimant may rationalize that it would have done no good to tell one of his supervisors that he was not reporting to duty, either because they could not **immediately** be reached by telephone or that the telephone was not answered the first (and only) time he called, or that another supervisor would not believe his reasons for tardiness or absence, the fact remains that it is not the employe but management which makes the judgment how to adjust work or **employes** to meet an unscheduled development. In short, the rule is so firm in the railroad industry that an employe must report on time and, if he cannot do so, **must** give his supervisors notice why he cannot report as scheduled, that claimant is left without defense as to whether or not he violated the rule.

The only remaining question therefore is whether the **penalty** matched the offense.

The Board has authority to reduce an excessive penalty under its statutory mandate to adjust grievances between employes and management on property subject to the Railway Labor Act and it does seem that the penalty here was unusually severe for the **offense**, **considering** the circumstances of , family emergency, but the decision in this case by management to impose the discipline it did for the offense must be more disproportionate than it was to warrant the Board substituting its judgment for that of the carrier as to what is appropriate discipline to govern its employes on this property.

Considering the thirty day suspension for this understandable, if not justifiable, **violation** and the earlier discipline of 10 days suspension of this claimant for being one hour late, **this** railroad will have to live with whatever reputation it has earned for imposing discipline, but this is a question that the management of this railroad must consider in establishing **whatever image or reputation** it thinks is appropriate in dealing with its employes- within limitations determined by this Board in the event of truly disproportionate penalty for any given offense.

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. Pauloz
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May 1977.