NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21809

THIRD DIVISION Docket Number MW-21709

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Norfolk and Western Railway Company (Lake Region)

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

(1) Section Laborer Charles S. Neeley and Section Laborer-Relief Crossing Watchman Michael L. Hannon were withheld from service from November 13, 1974 through December 29, 1974 without just and sufficient cause (System File MW-MUN-75-8).

(2) The charges against Claimants Neeley and Hannon shall be stricken from the record and each of them shall be allowed pay for the assigned working hours actually lost, less any earnings in the service of the company.

OPINION OF BOARD: On November 8, 1974, both Claimants (without notification to - or permission from - their Supervisor) left work. On November 13, the two Employes were advised that they were being withheld from service, pending formal investigation for having been "absent from work without permission."

The hearing was initially scheduled for December 4, 1974, but was postponed (by mutual consent) until December 19, 1974.

Subsequent to the hearing (on December 27, 1974), Claimants were assessed a forty-seven (47) day actual suspension (which represented the amount of time the Employes had been out of service) and they were instructed to report for duty on December 30.

The Claimants concede that they did not seek permission to leave the work area on the day in question, but they contend that no permission was necessary or required because they were both sick and Rule 49 "Leave of Absence" controls:

> "(a) During personal illness or physical disability employes will be granted leave of absence until able to return to work."

In addition, they contend - notwithstanding the "sickness" argument- that Carrier erred when it removed them from service pending the hearing.

The Carrier reminds us that, as a fundamental principle, no employe has a unilateral right to absent himself from duty without permission - nor does Rule 49 (or any reasonable interpretation thereof) grant any such a right.

Further, Carrier urges that its action of withholding the Employes from service pending the investigation is clearly permitted by Rule 22(a) and such action is not limited solely to situations of "gross misconduct."

Our review of the record compels us to conclude that there is substantial evidence - including the admissions of the Claimants - that they absented themselves from their assignments without permission, or without even a notification to a Foreman. Surely, an employe - even one who has a bona fide illness - should not expect to merely "walk off the job" with impunity whenever he so desires. Such an expectation, which would be chaotic in nature, must certainly be rejected. Thus, some amount of discipline is clearly warranted under this record.

But, our views as expressed above, should not imply a total approval of Carrier's action in this dispute. Simply stated, we are disturbed by a withholding of employes from service - pending a hearing - under the circumstances of this record. We recognize that our jurisdiction does ***not*** permit us to amend the parties' negotiated Rule. But, we are permitted to examine if Carrier has a "...rational and reasonable basis for making the removal in the first instance..." and/or if there is "...any compelling reason or urgency to remove the Claimants from service immediately." (See Award 21341 involving these same parties). We find nothing of record which reasonably served as a basis for removing these Claimants from service pending the hearing.

Accordingly, we find that the Employes were improperly withheld from service from November 13, 1974 until December 4, 1974 (the date on which the hearing was originally scheduled) and that they should be compensated "for the assigned working hours actually lost, less any earnings in the service of the Company" (Rule 22(e)) for that period of time.

The suspensions from December 5, 1974 through December 29, 1974 will be affirmed as suspensions for the offenses of which the Claimants were found guilty.

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 Employes involved in this dispute are respectively Carrier and Employes 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 violated.

A W A R D

Claims sustained to the extent stated in the Opinion of Board, above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1977.