

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22464
Docket Number M-22342

Robert A. Franden, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Illinois Central Gulf **Railroad**)

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

(1) Welder **R. E. McIntosh** was unjustly treated when he **was** suspended from service **on** August 30, 31 and September 1, 1976 because of his inability to work on **August** 27, 1976.

(2) The hearing requested by the **claimant** was not **timely** held.

(3) Because of either or both (1) and/or (2) above, the claimant shall be allowed three days' (24 hours) pay at his **straight-time** rate (System File **SL-193-T-76/134-296-222** Spl. Case No. 1070 MofW). "

OPINION OF BOARD: Claimant was suspended from the service of **the** Carrier for three days due to his failure to report ahead of time **that** he would not be reporting to work **one** day due to complications which arose due to the death of his father. **The** claimant called **in** fifty minutes after his starting time at which time he was **informed** by his foreman of **the** suspension.

The applicable rule in **the** instant dispute is **Rule** 33.

"RULE 33. DISCIPLINE

"(a) Employees shall not be **disciplined*** or dismissed until after a fair and impartial hearing. Notice of such hearing, stating the **known circum-**stances **involved**, shall be given to the employee in writing within 10 days of the date that **knowledge** of **the** alleged offense has been received by the division engineer or his authorized representative.

"(b) Hearing shall be held within 10 days from the date of the notice to the employee of the alleged

"offense by an officer of the carrier unless for good cause additional time is requested by the carrier, his representative, or the employee, provided his representative has knowledge thereof."

* * * *

"* Foremen will have the right, when the circumstances dictate to suspend an employee working under their jurisdiction, without a hearing. For the first offense a foreman is limited to assessing a one-day suspension, for a second offense a foreman can suspend an employee up to three days and for subsequent offenses the foreman can suspend an employee up to five days. If an employee feels he has been unjustly treated, he may request a hearing within ten days of the date the suspension begins."

The claimant requested a hearing as provided in the asterisk provision dealing with suspensions by foreman. The request was made on September 1, 1976. The hearing was held on October 22, 1976.

The claimant takes the position that the ten day time limit set out in paragraph (b) of Rule 33 applies to hearings requested under the asterisk provision and that the hearing was therefore not timely held. The Carrier takes the position that there is no time limit for the hearing called for in the asterisk provision.

Assuming, *arguendo*, that the Carrier's interpretation of the rule is correct it would still be incumbent upon it to provide the hearing within a reasonable time. Fifty-twoday between the hearing request and the hearing is an unreasonable length of time. The hearing was not timely held. We will 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;

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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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *G. W. Paulus*
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of **July 1979**.