

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **22542**
Docket Number **MW-22426**

George S. Roukis, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employes**
(Fort Worth **and** Denver Railway Company

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

(1) The ten (10) day suspension (**commencing** 8:00 A.M.,
February 28, 1977 and ending 5:00 P.M., March 11, 1977) imposed upon
C. M. Beard was improper a&without just and sufficient cause
/System File F-8-77/G-90(MW)/.

(2) The personal record of the Claimant be cleared of said
suspension and he be reimbursed for all wage loss suffered **in** accordance
with the provisions of Rule 26(c)."

OPINION OF BOARD: This Board has carefully examined the procedural
objections raised by the parties and, of **necessity**,
must reject them.

Claimant's contention that the discipline notice was untimely
rendered in violation of Agreement **Rule** 26(a) is unsupported by the
record or the Board's definitional requirements regarding the word
"rendered."

Claimant did not adduce confirmatory proof such **as** the
envelope containing the date the notice was **mailed** or convincingly
demonstrate that the word "rendered" as used in this context is
synonymous with the word "received."

In Third Division Award 13219, we held in pertinent part that,

'This line of **authority** holds, **in** effect, that notice of the
decision must be dispatched within the **time** limit in such
manner as may reasonably be relied on to actually get the
notice to the **employee**, and that *prima facie* evidence of com-
pliance with the rule stems from the date the notice is sent,
not from the date it is received."

We believe this principle applies to the facts herein.

On the other hand, carrier's lateness in waiting until the May 5th and 6th conference to discuss its ave-t that claimant didn't send a carbon copy of the March 7, 1977 declination letter to the General Manager did not cure its failure to cite this omission in its March 22, 1977 response. It was under a procedural obligation to raise this argument earlier.

In the instant dispute, claimant was given a ten **(10)** day suspension, following an investigative hearing held **on** September 25, 1977 in connection with his alleged failure to secure proper permission to be off from work on January 14, 1977. In defense of his position, he argues that his automobile's fuel pump malfunction, unavoidably kept him from reporting to work and that he tried to call his foreman between **7:20** A.M. and **7:30** A.M. and the Star Agent located at Dalhart, Texas. **He** submitted a receipt showing a \$14.64 expenditure for auto parts, dated January 14, 1977.

Carrier, contrawise, asserts that his foreman was at **home** during the purported telephone attempt and that the Star Agent was at work at the Dalhart station. It contends that the auto parts receipt was altered, since the number 4 in the date section marked 1-14-77 was different from the number 4 written in the cost columns.

In our review of the case, we agree with carrier's position that claimant failed to notify his foreman properly that he would have to be off from work that day. Bis assertions that he called his foreman between **7:20** A.M. and **7:30** A.M. and the Star Agent are unsupported. Claimant was under a more compelling obligation, given his particular employment circumstances to **insure** that he notified his superiors promptly of any prospective absences.

There was no indication that his foreman was not at home between **7:20** A.M. and **7:30** A.M. and the record shows that the Star Agent was at his assigned location on this date.

Even assuming arguendo, that the Star Agent had momentarily stepped outside his office that morning, it is inconceivable that he could not be eventually reached, since **grievant** testified **thathe** tried "on and off" to contact him.

When the dubiously dated auto parts receipt is factored into the sum total calculation and measured objectively against his prior attendance record, we believe that the ten (10) day suspension penalty was not unreasonable or excessive. We will deny 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;

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. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1979.