

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22546
Docket Number MW-22521

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Terminal Railroad Association of St. Louis

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

(1) The suspension of five (5) days imposed upon Track Laborer R. A. Griffin was without just and sufficient cause, unwarranted and an abuse of justice and discretion (System File 1977-20).

(2) The claimant's record be cleared of the charge placed against him and reimbursement be made for all wage loss suffered, including overtime, during the period June 6 to June 10, both dates inclusive."

OPINION OF BOARD: Claimant was charged with being improperly absent / from his assignment on April 27, 1977.

An investigative hearing was held on May 18, 1977 at which time he was found guilty of the charges and suspended from service without pay for five (5) days.

This disposition was unsuccessfully appealed on the property and is now presently before us for determination.

In support of his position, claimant asserts that he properly sought permission to be off on April 27, 1977 pursuant to Agreement Rule 22(a) and was refused. Rule 22(a), which is referenced hereinafter, reads: "Except in case of sickness or personal injury, employees must secure permission before laying off unless unavoidably prevented from doing so." He contends that the latter portion of the rule particularly the words "unless unavoidably prevented from doing so" relates to his predicament and that he fully complied with its intended application.

Carrier, correlatively, argues that the Track Supervisor granted him permission to be off on April 26 and 27 and thus observed its contractual requirements. It avers that claimant had ample time to repair his automobile and was not placed in an unavoidable situation when he asked to be off on April 27. It noted that the five (5) days

suspension penalty was not unreasonable when measured **against** his "very poor attendance record" **and** the fact that this was his first disciplinary **investigation**.

In **our** review of this case, we agree with carrier that it provided claimant sufficient time to fix his personal vehicle consistent with the language of **Rule 22(a)**.

On April 25 **and** 26, claimant's situation was perhaps unavoidable within the **meaning** of this rule, but not so on April 27th. At this point, **claimant** was under a compelling obligation to insure that his car was repaired **or** alternatively arranged for another mode of **transportation** to take him to work. To assert that this condition was still "unavoidable" on the third (3rd) day was indefensible.

Carrier cannot be expected to perpetuate this state of affairs, especially where as here, it provided him reasonable time to repair his car **and** it needed him on the claimed date.

We do not believe, **on** the other hand, that this infraction warrants a five (5) day suspension since Carrier asserted without substantive verification that he had "a very poor attendance record," It should have submitted additional detail on this point.

Because this was his first disciplinary investigation and he did at least try to seek permission to be off on April 27, we will reduce the aforesaid suspension to three (3) days to reflect a more judicious balance between the offense and the **commensurate** penalty.

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

Award **Number 22546**
Docket **Number m-22521**

Page 3

That the discipline was excessive.

A W A R D

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paul*
Executive Secretary

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