

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22904
Docket Number MW-22859

Martin F. Scheinman, Referee

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

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

(1) The Carrier violated the **Agreement** when it suspended **Trackmen** M. W. King and A. E. Gilbreath from service for one (1) day (January 25, 1978) without benefit of an investigation (System File F-2-78).

(2) The **claimants** now be compensated for all wage loss suffered in accordance with **Rule 26(c).**"

OPINION OF BOARD: Claimants, A. E. Gilbreath and M. W. King, at the **time** of this dispute, were assigned as track laborers to Extra Gang No. 1, working in the vicinity of Bellview, Texas. They were scheduled to work **8:00** A.M. to **4:30** P.M., **Monday** through Friday. On Wednesday, January 25, 1978, Claimants arrived at the gang location **approximately** forty (40) minutes late. They explained that they were detained because of a freezing rain which caused them to drive more slowly than usual. **Foreman** Martin rejected **Claimants'** excuse and informed them that they would not be permitted to work that day.

The Organization contends that Martin's action constituted a one-day suspension. In its view, suspending Claimants without a prior investigation violated **Rule 26(a)** of the Agreement. **Rule 26(a)** states:

"Rule 26--DISCIPLINE

Hearing (a): An **employee** who has been in the service sixty (60) days or more or whose application has been approved, will not be disciplined or dismissed **without** an investigation. He **may**, however, be held out of service pending such investigation. He **shall** be apprised, in writing, of the charges preferred against him and be present at such investigation **and** may be represented by his duly authorized representative of the Organization party to this agreement. The investigation shall be held within ten (10) days after charges are preferred. At such investigation, he shall have **the** right to call witnesses to testify in his behalf.

"Decision will be rendered within thirty (30) days after the completion of the investigation except where an **employee** is held out of service, in which **case** decision will be rendered within twenty (20) days. Any appeal from such decision will be handled under the provision of Rule 27."

It is undisputed that **Claimants** had been previously warned by their foreman that if they did not report for **work on time** they would not be permitted to work a position that day. In order to resolve a problem of tardiness and absenteeism, the foreman had placed the employees **in the** gang on notice of this policy.

Claimants were fully aware of the fact that they were required to be on the site and ready to begin work at **8:00** A.M. They understood the potential consequences of reporting after 8:00 A.M. unless an adequate explanation was provided. Yet, Claimants were **tardy** on January 25th. They were the only two members of the gang who were tardy; there were seventeen **employees** assigned to Extra **Gang** No. 1 that day. **When** they were late, Martin, after rejecting their explanation, acted as he had indicated he would. His decision was neither a surprise to Claimants, nor unreasonable considering the prior notification.

Moreover, given all the surrounding circumstances, we **are** convinced that Carrier's action cannot be viewed as disciplinary in nature. See **Awards** Fourth Division 2598, Second Division 7834, and PLB No. 1525, Award **#3**. Carrier's refusal to permit Claimants to work is not tantamount to discipline. As such, Rule 26 is wholly inapplicable. Since this is the only rule that is alleged to have been violated, we will dismiss the claim in its entirety.

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;

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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. Paulre*
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June 1980.