

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23184**
Docket Number CL-23119

George S. Roukis, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
PARTIES TO DISPUTE: (
(Illinois Central Gulf Railroad

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-8870)
that:

(a) Carrier violated the Agreement when it wrongfully suspended
A. J. Wesley and L. W. Logan following an investigation held at **Centralia**,
Illinois, April 5, 1977.

(b) Carrier now be required to compensate claimants Wesley and Logan
five days pay each, **and** their records cleared of all charges as a result of
being held out of service following a **formal** investigation on April 5, 1977.

OPINION OF BOARD: Claimants A. J. Wesley and L. W. Logan were assessed a five
day suspension following an investigative hearing held on
April 5, 1977. The purpose of the investigation was to determine whether
A. J. Wesley was **absent** from his assignment, failed to **perform** his duties and
arranged for L. W. Logan to punch out his time on March 30, 1977. This dispo-
sition was appealed pursuant to Agreement provision.

In defense of his position, Claimant Wesley contends that he was ill
and located in the North Wheel Room during his absence between **9:30** P.M. and
11:55 P.M., although he acknowledged his failure to punch out properly. He denied
ever leaving the property. Claimant Logan attributes punching out the **wrong** card
to **human** error.

In our review of this **case**, we concur with Carrier's determination.
It **may** well be that **Claimant** Wesley was unable to perform his assignment, but he
made no effort to notify his supervisor that he was ill. The record shows that
Special Agent **Slover** and Production Manager **Gallatin** could not locate him despite
a diligent and methodical search and that he failed to comply with the appropriate
notification procedures. He was certainly under an obligation to apprise **super-**
vision of his purported **condition**, rather than to disappear literally from the
work **situs**. It is not enough to assert that he was in the North Wheel Room, a
"**Birdcage**" as this specific location is customarily known. A compelling pre-
sumption arises that he left the property. Moreover, he compounded his predic-
ament when he permitted de facto another **employee** to punch out his time. By itself,
this is a serious infraction.

Correlatively, we do not find any substantive basis to Claimant Logan's defensive assertions. The eyewitness testimony of the Production **Foreman** dispels any notion of inadvertence. To the contrary, it establishes a purposeful design. Careful analysis of the testimonial record **does** not indicate that Claimant Logan was momentarily confused when he punched out at about **11:50 P.M.**, but instead shows that he **simultaneously** and deliberately punched out both cards. His rebuttal testimony does not overcome this persuasive finding. In Third Division Award **12954** we upheld a thirty (30) day suspension when a Machine Operator left his assigned duties without permission and falsified his **time** card. In the instant case, **we** have a conceptually analogous situation **involving** two **employees**. Their sum total deportment was impermissible **and** violative of Carrier's rules. 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:


Executive Secretary

Dated at Chicago, Illinois, this **18th** day of **February** 1981.