

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23366**
Docket Number CL-23305

John B. LaRocco, Referee

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

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-8954) that:

1. Company violated the agreement between the parties when it wrongfully suspended Clerk **Ted Noll, III** from service for ten work days, **July 10, 1978** through **July 21, 1978**, following an investigation held on **June 29, 1978**, wherein the charges were not sustained.

2. **Company** shall now be required to compensate Clerk **Noll, III** for ten work days, **July 10, 1978** through **July 21, 1978**, at the rate of his regular position for reimbursement of pay lost during **this** period, and further that his record **will** be cleared.

OPINION OF BOARD: Claimant, who works at the materials department at **Centralia, Illinois**, was charged with three offenses in a notice dated **June 23, 1978**. The three alleged offenses were: 1) failure to obey instructions issued by the General Foreman at **10:00 a.m.** on **June 21, 1978**; 2) leaving the premises without proper authority at the **same** time and 3) failing to punch out and removing his time card from the premises. After an Investigation held on **June 29, 1978**, the **Carrier** suspended the claimant for ten workdays.

At the **commencement** of the investigation, the Organization timely objected to the substance of the notice on the grounds that the notice lacked the specificity required by Rule 22(b). We overrule the objection. The Carrier's notice of charges sufficiently described the alleged act of **insubordination** by stating the time **and** date the order was given, Identified the foreman who issued the instruction, and alleged that claimant failed to obey the order. See Third Division Award go. 18606 (**Rimer**).

On the merits, the Organization contends the Carrier failed to prove any of the charges. According to the employees, the testimony elicited at the investigation shows that the claimant became ill during his shift on **June 21, 1978** and received permission to leave the premises. **Since** claimant was ill and unable to complete his duties, he was not insubordinate. **The claimant** emphatically **denied** that he removed his time card from the time card rack. Alternatively, the **Organization** argues that even **if** the claimant failed to receive permission to leave, he was not obligated to procure such permission. The Carrier asserts that **claimant walked** off the premises simply because he wanted to avoid **cleaning** up scrap materials (which the claimant had previously **spilt**). The Carrier states that claimant did not receive proper permission

before he left the premises though he had an opportunity to request permission. In any event, the Carrier argues that the claimant was feigning illness in an improper attempt to justify his insubordination. As to the time card offense, the Carrier proffered evidence that claimant's time card was missing after claimant left the **premises** on June 21, 1978.

At the investigation, the claimant admitted that he received a direct order from the General Foreman to pick up scrap materials and that he did not perform the task. While claimant also conceded that he never actually requested permission to leave the premises, he testified that the Acting Delivery Foreman (the **claimant's immediate** supervisor) **affirmatively** nodded his head when claimant stated that he was going to apply for a sick day. The Acting Delivery Foreman specifically denies giving claimant permission to leave. Furthermore, after the General Foreman discovered that the claimant did not perform the assigned task, he could find neither the claimant nor his **time** card. The Acting Delivery **Foreman** did inform the General Foreman that **claimant** was going to see about a sick day.

Looking at the record, we find that claimant failed to receive proper authorization **to** leave the premises on June 21, 1978. He had an opportunity to tell his supervisor that he was ill and to request permission to leave. Instead, he **preemptorily** stated that he was going **to** apply for a sick day. The claimant admitted that, on this property, it is customary to obtain permission to lay off due to illness. Claimant's testimony that he suddenly became ill **is** inherently suspect. The General Foreman had just given claimant a direct order to clean up his own mess. It was reasonable for the hearing officer to conclude that the foreman's directive, rather **than** genuine illness, caused claimant to seek a sick day. Third Division Award No. 22498 (Carter). Because claimant left the premises without proper authority, there was no excuse for his failure to obey the general foreman's order.

We have no reason to doubt the General Foreman's testimony that claimant's time card was not **in** the **time** card rack after the claimant **improperly** left the work premises. However, merely because the card was missing does not lead to a conclusion that claimant took the card. The Carrier, as **part** of its burden of proof, must establish a nexus between the missing **time** card and some wrongful conduct by the claimant. **The time card** might have been misplaced by someone other than the **claimant**. Nobody **observed claimant** taking the card. Thus, to conclude that **claimant** absconded with the card is speculative and so we cannot sustain the third charge brought against the claimant.

Insubordination is a serious offense. In this case, claimant was not only insubordinate but also departed **from** the premises without **proper** authority. Though we have found that the Carrier failed to prove the time card charge, the gravity of the other two offenses prevents us from adjusting the **discipline** imposed on the claimant.

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 **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 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 **28th** day of August **1981**.