

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23439  
Docket Number SG-23420

**Martin F. Scheinman**, Referee

(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(Fort Authority **Trans-Hudson Corporation**

STATEMENT OF CLAIM: "Claim of **the General Committee** of the Brotherhood of Railroad Signalmen on the Port Authority Tram-Hudson corporation:

The decision rendered by Mr. K. W. Black on March 9, 1979, concerning the discipline of Signal Repairman 1, **Mr. Charles Surrusco**, for allegedly violating Rules 7 and 26 of the PATH Book of Rules be rescinded."

OPINION OF BOARD: After investigation, **Claimant Charles Surrusco**, Signal Repairman 1, was **assessed asix (6) week suspension** account of an alleged violation of Rules 7 and 26 of the Agreement. Claimant reported off duty on January 29, 1979 and the reason for his **departure from work** was stated to be "flu". Subsequently, Claimant missed work from January 30 through February 2, 1979 inclusive, and filed and received sick pay for this period.

Carrier charged that Claimant was observed on January 31 and February 1, 1979, behaving in a manner inconsistent with his illness. **Specifically**, Claimant **was** observed **operating a** motor vehicle, going shopping and going to the movies. Therefore, it **found** Claimant **to** be in violation of Rules 7 and 26.

Rules 7 and 26 state:

"Rule 7. To enter or remain in the service, employees **must** be of good character and **must not commit** an insubordinate, dishonest, **immoral**, illegal or vicious act. They must conduct themselves at all **times**, whether on or off PATE property, in such **a manner** as not to bring discredit upon **PATH.**"

"Rule 26. Employees must maintain a satisfactory attendance record. If disabled due to accident or illness, or if unavoidably delayed, they must report by telephone to the person designated in their Division that they will be late or unable to cover their assignment and the reason therefore. This must be done in time to permit PATH to fill their position if necessary. Unexplained absence, excessive **absenteeism**, lateness or making **a** false report of **injury** or illness will be **cause** for disciplinary **action.** Employees returning **from** periods of absence must advise their supervisor sufficiently in advance to prevent their vacancy from being filled by another employee."

**The Organization**, on the other hand, contends that Carrier violated Article X-A of the Agreement when it rendered its disciplinary decision by letter on March 9, 1979. Article 'X4 states, in pertinent part, "The said hearing officer shall render his decision."

The Organization contends that **under** the terms of Article X-A Hearing Officer Daniel J. Reynolds was obligated to render the decision and assess the penalty. Since K. W. Black, acting for E. F. Nicholson, Acting Superintendent of Power, Signals and **Communication**, rendered the decision and assessed the discipline, the **Employees** assert Article X-A was violated. **In** the **Employees'** view, Carrier's failure to properly apply Article X-A warrants setting aside the discipline **imposed**.

After careful review of all the evidence presented, this Board finds that the evidence conclusively establishes that Claimant had indeed engaged in activities contradictory to his illness while was receiving paid sick leave. The record **indicates** that **Claimant** understood this. As such, he is subject to appropriate **disciplinary** action.

As to the appropriate penalty, we are convinced that the six (6) week suspension imposed is excessive. Given all of the circumstances, the six (6) week suspension issued to **Claimant** should be reduced to three (3) weeks and we do so find.

Finally, the Organization's procedural **•** rgmment that Article X-A was not properly applied. in that the hearing officer did not issue the disciplinary notice, must be rejected. This practice was established in several prior **disciplinary proceedings**. The Organization raised no objection to the practice during those proceedings. It **is** inconsistent to do so now.

**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 Employee 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 violated.

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Claim sustained to the extent **and** in the **manner** set forth in **Opinion.**

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest : *A. W. Paulsen*  
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November 1981.