

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24474
Docket Number MW-24403

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Seaboard Coast Line Railroad Company

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

(1) The ten (10) days of suspension imposed upon Apprentice Foreman N. N. Bryant for alleged violation of Agreement Rule 17(b) and Rule G-1 of the Carrier's Operating Rules was unwarranted, without just and sufficient cause and an abuse of justice and discretion by the Carrier (System File #37-SCL-80-116/12-39(80-57) G).

(2) Assistant Vice Resident A. C. Parker, Jr. failed to disallow the claim (appealed to him under date of July 10, 1980) as contractually stipulated within Section 1(a) of Agreement Rule 40.

(3) As a consequence of either or both (1) and/or (2) above,

'Mr. Bryant's record be cleared of the charges
and that he be reimbursed for all wage loss
suffered.'"

OPINION OF BOARD: An investigation was held on June 11, 1980 to determine whether Claimant violated Agreement Rule 19 and Operating Rule G-1 when he was absent from work without permission on June 4, 1980. Based on the investigative record, Carrier concluded that he disregarded the Roadmaster's instructions to report to work on June 4, 1980 and he was suspended from service for ten (10) days, effective July 21, 1980. This disposition was appealed on both procedural and substantive grounds.

In defense of his petition, Claimant contends that Carrier failed to respond to the Organization's July 10, 1980 discipline appeals letter in timely fashion and thus the claim should be allowed in accordance with the time limitation requirements of Agreement Rule 40. He asserts that Carrier did not answer the aforesaid letter within sixty (60) days. He further contends that he made every serious effort to secure permission from the Roadmaster to be off on June 4, 1980 so that he could repair the septic tank problem at his home. He avers that the septic tank had clogged and backed up, posing a health danger to his family. He acknowledges not reporting to work at his assigned time on June 4, 1980, and disregarded the Roadmaster's instructions, but notes that he reported to work at 9:35 A.M. While he was not permitted to work that day, he adduced documentary proof showing that a septic tank firm performed repairs at his home.

Carrier argues that he was plainly insubordinate, when he did not report to work, since the Roadmaster pointedly advised him on June 3 and then

again at 6:30 A.M. on June 4 that his services were needed. It disputes his contention that it did not properly respond to the Organization's July 10, 1980 appeals letter within the prescribed sixty (60) days time period, since the Assistant Vice-President **Engineering and Maintenance of Way** declined his appeal on July 30, 1980. It asserts that the record evidence unmistakably shows that Claimant failed to comply with the Roadmaster's explicit instructions and avers that he was patently guilty of violating the cited Agreement and Operating Rules. These Rules are referenced as follows:

Rule 17 - Leave of Absence

"(b) An employee desiring to be absent from service must obtain permission from his foreman or the proper officer. In case an employee is unavoidably kept from work, he must be able to furnish proof of his inability to notify his foreman or proper officer."

Rule G-1

"G-1. Disloyalty, dishonesty, desertion, intemperance, immorality, commission of a felony, vicious or uncivil conduct, insubordination, sleeping on duty or assuming a reclining position conducive to sleeping, incompetency, willfull neglect, making false statement or concealing facts concerning matters under investigation will subject the offender to dismissal."

In reviewing this case we find it difficult to determine precisely whether Carrier, in fact, failed to respond to the Organization's July 10, 1980 appeals letter in timely fashion. Carrier's assertion that it responded on July 30, 1980 coupled with its correlative statement that the Organization failed to respond to its July 30, 1980 letter raises factual questions, which are unanswered by the record. As such, we cannot fill in the missing gaps by judicial interpolation.

From the record, it is clear that Claimant was insubordinate on June 4 and absent from work without permission. He should have complied with the Roadmaster's instructions. He was told to report to work at his normal starting time on June 4, 1980 and he disregarded the Roadmaster's directives. As a rule, we would unhesitatingly sustain Carrier's disciplinary determination, given insubordinate behavior, but we believe that the disquieting circumstances he confronted and his attempt to obtain permission to be off on June 4, provide sufficient extenuation to reduce the instant penalty. He was wrong to the extent that he failed to comply with his supervisor's instructions, but he was faced with a potential health problem which demanded immediate attention. We have no evidence that other members of his family could have dealt with the septic tank problem in a safe, efficacious manner or any evidence that he was a problem employee. We do not excuse his behavior since this type of misconduct is a serious workplace infraction, but we feel that these mitigative factors justify a reduced penalty. The ten (10) day suspension was somewhat excessive. For these reasons, we will reduce the aforesaid suspension to a Letter of Reprimand with the added admonition that we expect Claimant to comply fully with supervisory directives.

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 **discipline** was **excessive**.

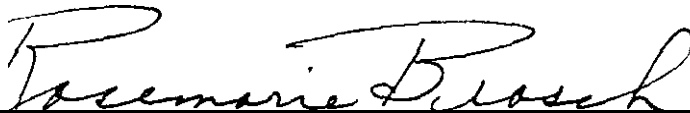
A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By **Order** of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By



Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this **14th day** of July 1983.