

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24896
Docket Number MW-25012

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Norfolk and Western Railway Company (former
(Illinois Terminal Railroad Company)

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

(1) The thirty (30) days of suspension imposed upon Crane Operator E. M. James, Jr. for "reporting late for work on December 4, 1981 was without just, sufficient or reasonable cause, arbitrary, capricious and a gross abuse of justice and discretion by the Carrier (System File N&W 1982-3/MW-STL-81-11).

(2) The claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: By letter dated December 9, 1981 the Claimant, E. M. James, Jr. received notice to attend a formal investigation in connection with having allegedly reported late for work on December 4, 1981. After the hearing was rescheduled for January 13, 1982 the Claimant was notified by letter dated January 29, 1982 that he was being assessed a thirty (30) day actual suspension. After appeal on the property up to and including the highest Carrier officer designated to hear such, this case is now before the National Railroad Adjustment Board.

A review of the record shows that the Claimant called in at approximately 7:20 AM on December 4, 1981 stating that he would be late covering his assignment because he could not get his car started. The record establishes, therefore, that the Claimant called in late for work since his shift began at 7:00 AM, and it complies with substantial evidence showing in this respect. At the same time, however, the record shows that the Claimant appeared to make reasonable efforts to correct his car problems on December 4, 1981 in order to get to work.

With respect to the quantum of discipline Board precedent in numerous Awards states that the role of discipline is not only punitive but that it should provide corrective and training measures (Second Division 6485; Third Division 5372, 19037). At the same time an employee's prior work history can be used in discipline determination (Second Division 6632, 8527; Third Division 22320, 23508). A review of the record shows that the Claimant's record is not without blemish. Nevertheless, a thirty (30) day actual suspension for the infraction here at bar appears to be beyond the reasonable bounds of the application of the principle of progressive discipline given the Claimant's efforts to have his car repaired on the day in question in order to cover his assignment. Receipt for the used battery the Claimant bought from a certain B and B Motors is part of the record. The thirty (30) day suspension shall, therefore, be reduced to a fifteen (15) day actual suspension, and the Claimant shall be paid for all wage loss incurred as a result of the incident at bar beyond fifteen (15) actual days.

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

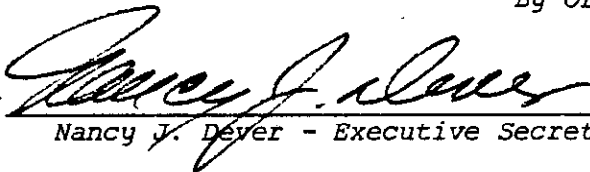
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1984.