

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24935
Docket Number CL-25106

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employes
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9769) that:

1. Carrier violated the terms of the current Agreement, particularly Rule 21, when under date of June 15, 1981, it assessed an actual fifteen (15) day suspension on Mr. Sherman Redmond, Clerk at Wood Street Station, as a result of formal investigation held on June 9, 1981, and,
2. Carrier shall now be required to compensate Mr. Sherman Redmond for all monetary losses account serving the actual fifteen (15) day suspension commencing June 16, 1981, and his record shall be cleared of all charges preferred against him.

OPINION OF BOARD: By letter dated June 4, 1981 the Claimant, Mr. Sherman Redmond, was notified by the Carrier to attend a formal investigation on June 9, 1981 to determine his responsibility, if any, in connection with the failure to file J-1 Reports as instructed by his supervisor. On June 4, 1981, Larome Guy, Assistant Terminal Manager and supervisor alleged that Claimant was not productively employed and instructed him to file J-1 Reports. Claimant did not begin the reports, but instead went on break. When confronted by his supervisor, Claimant contended he was ill, was sent to the Carrier's medical facility, and after no direct evidence of illness, he was returned to work. The day being over, Claimant went home after contacting his supervisor.

With respect to the incident allegedly occurring on June 4, 1981 a careful review of the record shows sufficient substantial evidence to warrant the conclusion that the Claimant is guilty as charged. Mr. Guy did instruct the Claimant to file J-1 Reports after noting he was not productively employed and this was substantiated both by the Claimant and Mr. Mason during testimony given during the formal investigation. During the hearing the Claimant testified that instead of doing the work assignment or even notifying the supervisor that he would do so immediately after a break, Claimant simply went on break and thereafter, claiming he was ill finished his work day without in any manner showing a willingness or attempt to abide by Carrier's instructions. There is sufficient substantial evidence here to warrant conclusion that Claimant is guilty of failing to abide by instructions of a supervisor. Substantial evidence has been defined as such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed. Co. vs. Labor Board 305, U.S. 197, 229). In view of the record before the Board, therefore, as well as Claimant's personal record which was introduced into the case on property, which latter must be viewed not with respect to the merits of this case, but with respect to the quantum of discipline, this Board cannot conclude that Carrier's handling of this matter was unreasonable. Absent therefore, evidence that Carrier's determination was capricious or arbitrary or that its discipline was excessive, the Board finds no basis for disturbing the Carrier's action in the discipline imposed.

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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1984.