

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24949
Docket Number MW-25133

Thomas F. Carey, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation

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

(1) The forty-five (45) days of suspension imposed upon Mr. D. L. Halfpenny for being absent from duty on August 18, 1980 was without just and sufficient cause and unwarranted (System Docket 672).

(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: Claimant was employed as a Camp Car attendant and was assigned to such cars at Tyrone, Pennsylvania when this dispute arose. At that time, he had four (4) years of service with the Carrier.

The Carrier charges that on Monday, August 18, 1980, the Claimant was absent from service and that he failed to call his Division Engineer in a timely manner to notify him of his absence.

This incident resulted in a formal investigation held on September 3, 1980, in which the following charges was addressed.

"Your unauthorized absence from duty on Monday, August 18, 1980."

As a result of this investigation, the Carrier issued the Claimant a Notice of Discipline which assessed him "forty-five days' suspension - previous discipline record considered."

The Carrier contends that the Claimant was well aware of his obligation to call his Division Engineer as follows:

"Q. Mr. Halfpenny are you aware that when you are absent from work you must report to your immediate supervisor before the start of your tour of duty that day?

A. Yes, I am. Earlier during this week, or two weeks before this incident, I was told by my supervisor that I was not allowed to report directly to him but should report on the recording machine in the Division Engineer's Office."

Since Claimant did not call in on the recording machine, the Carrier argues that its penalty of forty-five (45) days' suspension is appropriate.

The Organization insists that the Claimant made reasonable effort to notify the Carrier that, due to a vehicular breakdown, he would not be able to report for duty on August 18, 1980. In support of this position, the Organization cites the testimony of the Claimant.

"Q. Mr. Halfpenny, from the time that your car broke down until you back to the garage that towed your car, can you tell me what time you got back to the garage?

A. It was after 7 A.M. when I got back to the garage.

Q. Mr. Halfpenny, did you then try to call your immediate supervisor to report off duty?

Q. Yes, I called Tyrone camp cars, and also my family called the railroad office in Altoona."

The entire record has been reviewed. It establishes that the Claimant failed to call his Division Engineer as soon as the vehicular breakdown occurred. However, the record also establishes that the Claimant did call his immediate supervisor within one hour of the breakdown.

Under these circumstances, the Board believes that some penalty is warranted. Claimant knew he should have contacted his Division Engineer, but failed to do so. However, a penalty of forty-five (45) days' suspension is too severe. The record shows Claimant did notify the Carrier of his inability to report for work within one (1) hour of the time his automobile became incapacitated.

Under these circumstances, the Board believes that the forty-five (45) day suspension should be reduced to twenty (20) days suspension.

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. Dover - Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1984.