

NATIONAL. RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25288
Docket Number CL-24968

I. M. Lieberman, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: {

(The Pittsburgh and Lake Erie Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9700) that:

(a) In accordance with Rule 20 of the Rules Agreement effective September 1, 1946, as amended. we are appealing the decision of Director-Labor Relations and Personnel R. D. Jones in his letter dated May 20, 1981 in the discipline case of Custodian Mr. D. G. Varley who was charged with Rules (T) B-7 and J-1 of the **P&LE** General Rules and was assessed with a ninety (90) days actual sentence.

Rule (T) states:

"Absence without permission as well as unjustified
or excessive absences."

Rule J-1 states:

"Employees will not absent themselves from duty
without proper authority."

(b) We are not in accord with the decision of Mr. R. D. Jones, Director-Labor Relations and Personnel, and request that Custodian, Mr. David G. Varley, be returned to service **immediately** and paid for all lost wages and his record be cleared of this charge.

OPINION OF BOARD: On February 18, 1981, Claimant was working as a Custodian for Carrier in Pittsburgh. His hours of work **were** from 9:00 P.M. to 6:00 A.M. with lunch at approximately 1:00 A.M. On **the** night in question Claimant left the building at about 10:30 P.M. and, according to his testimony, returned about five minutes later and worked thereafter. At the lunch break Claimant stated that he left the building at about "1 A.M. to 2 A.M." and, not feeling well, sat in his car. He returned to the building at about 4:00 A.M. to 4:30 A.M. when he was confronted by his Supervisor and was sent home. His Supervisor claims that he did not do much work that **night and** was not seen after leaving the building at 10:30 P.M. For this transgression Claimant was charged with being absent without permission and after **an** investigation was penalized by a ninety-day suspension.

Carrier maintains that the infraction was in fact admitted by Claimant (except for a discrepancy as to the time out of the building) and the discipline was appropriate in view of the nature of the transgression. In fact, Carrier argues that dismissal has been found to be appropriate for similar offenses.

The Organization **argues** that the discipline was wholly inappropriate in view of the nature of the offense and Claimant's functions that night. It is urged that discipline must be related to the type of infraction and not applied by rote. In this instance Claimant had an **unblemished** record and almost four years of service for Carrier. Petitioner cites Award 23220 of this Board involving the same parties, which is almost identical to that herein.

There is no doubt of Claimant's guilt of the charges. The only open question is whether he was away from his work station for some 2 1/2 hours **or** for 5 **hours** (not including the lunch period). That question does not appear to be material to the resolution of this dispute. The heart of the matter is the measure of discipline imposed. This Board believes that discipline should be constructive and not punitive in nature. In that context each circumstance must be evaluated **or its own merits**. In this particular case it must be concluded that the discipline was disproportionate to the nature of the infraction, especially in view of the unblemished prior record of the Claimant. Thus, the penalty must be characterized as arbitrary and excessive. For reasons **analogous** to those expressed by this Board in Award 23220, the discipline in this case also will be reduced to a **45-day** suspension and Claimant will be made whole for losses sustained in excess of that period.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and Employee 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 28th day of February 1985.

