

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25290
Docket Number SG-25011

I. M. Lieberman, Referee

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(The Long Island Rail Road Company

STATEMENT OF CLAIM:

Claim of the General Committee of the Brotherhood of Railroad Signalmen on The Long Island Rail Road.

Appeal of the 10-working day suspension assessed on Signalman T&T P. W. Lyde effective February 8, 1982.

OPINION OF BOARD: Claimant was charged with excessive absenteeism and also violation of the Sick Leave Agreement in that he could not be contacted at the place where he gave notice he could be found during his illness. Following an investigation held on January 27, 1982, Claimant received a ten-day suspension, having been found guilty of the charges.

In the course of the handling of this matter, both sides raised a number of procedural arguments. A careful **evaluation** of the contentions indicates that **none** of those arguments is persuasive. Similarly, Petitioner's arguments relative to the conduct of the hearing are without merit.

The record indicates that Claimant had been absent for 26 days from September 30, 1981 through January 20, 1982; this is not in dispute. Further, it is indicated that the absences were related to an on-duty injury sustained by Claimant (a back injury). On January 13, 1982 a Carrier official attempted to contact Claimant by telephone at the location where he had indicated he could be found during his illness. Four phone calls **were** made and Claimant did not respond. Subsequently, Claimant testified as to the reasons he did not respond to two of the calls.

Section 12 of the Sick Leave Agreement provides as follows:

"Section 12. If a representative of the Carrier calls at the place where the absent employe gave notice that he could be found during his illness, **or** in the absence of such notice, calls at the home of the absent employe and **cannot** find him, the absent employe will be deemed to be absent without leave. Such employe will not be granted sick leave and will be subject to appropriate disciplinary action in accordance with the provisions of the existing **agreement.**"

As the Board views it, while there may be *some* doubt with respect to the excessive absenteeism charge (due to the work related injury) there is no question *but* that Carrier was unable to contact Claimant on January 13th. For that reason *only*, the claim must be denied. Obviously the penalty imposed, in the light of Claimant's prior record, was not discriminatory nor excessive.,

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 *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. Lee - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1985.

