

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25476
Docket Number Rw-25135

Martin F. Scheinman, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(Missouri-Kansas-Texas Railroad **Company**

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

(1) The **ninety (90)** days of suspension imposed upon Laborer A. Randall for alleged violation of **"General Rule A** of Circular **#DP-2"** on January 25 and 26, 1982 was arbitrary, capricious and unwarranted (System File **300-117**).

(2) The Carrier violated the Agreement **when it** failed and refused to allow Mr. **A. Randall** bereavement leave pay for January 25 and 26, 1982.

(3) Because of the violation referred to in Part (1) hereof, the claimant's record shall be cleared and he shall be compensated for all wage loss suffered during the period beginning January 27, 1982 and ending on April 27, 1982.

(4) The claimant shall be **allowed** sixteen (16) hours of bereavement leave pay at his straight time rate because of the violation referred to in Part (2) hereof.

OPINION OF BOARD: At the time this dispute arose, Claimant A. Randall was employed as a Laborer assigned to the Sled Gang headquartered at Lancaster, Texas. He worked under the supervision of Assistant Project **Engineer R. D. Newman** and Foreman **J. Pullen**.

On January 21, 1982, Claimant's father-in-law passed away. Claimant was absent from **work** on January 25 and 26, 1982, to attend the funeral. According to Claimant, he telephoned his headquarters on January 24, 1982, to inform **Carrier** that he would **not** be available for work the following two days. Carrier denies having **received** such a call.

On January 27, 1982, Claimant returned to work. **Assistant Project Engineer Newman** handed him a notice which ordered him to report for an investigation in connection with his having been

**"absent without permission in violation
of General Rule A of Circular #DP-2."**

That investigation was held on February 11, 1982. Subsequently, on February 19, 1982, Carrier notified Claimant that he was assessed ninety days suspension. The Organization protested Carrier's findings. Carrier timely denied the claim. Thereafter, it was handled in the usual manner **on** the property. It is now before this **Board** for adjudication.

The Organization contends that **Claimant's absence** on January 25 and 26, 1982, was authorized by Carrier officials. According to the Claimant, he telephoned the Dallas Yard Office prior to January 25, 1982, and informed an official that he would not be able to report for work. Claimant **"didn't** ask his (Carrier Officer's) name, I just told him I wouldn't be in the next **day"**. In the Organization's view, Claimant's testimony conclusively establishes that he properly notified Carrier that he would be absent from work on the days in question. Therefore, the Organization asks that the claim be sustained and that Claimant be **given** all back pay and benefits lost as a result of his suspension.

Carrier, on the other hand, maintains that it properly found Claimant guilty as charged. In its view, telephoning an unnamed Carrier Officer does not constitute proper notification of Claimant's impending absence. Therefore, Carrier asks that the claim **be rejected**.

After reviewing the record evidence, we are convinced that Carrier properly found Claimant guilty of rule violations in **this** case. Article VII - Bereavement Leave requires an **employee** who takes bereavement leave to **"make** provision for taking leave with **their supervising** officials in the usual manner.. Claimant acknowledged that he did not know the name of the person to **whom** he spoke. Clearly, his conversation did not constitute arranging **for leave** in **"the usual manner"**. In fact, there is no **showing** that he spoke to any supervising official to arrange for his absence on January 25 and 26, 1982.

In addition, the record evidence reveals that Claimant knew of the scheduling of his father-in-law's funeral on Thursday, January 21, 1982. **However**, he did not inform any supervising official of the need to take bereavement leave at any time. Instead, he waited until January 25 or shortly prior thereto to notify Carrier of his absence. Carrier has a right to expect prompt **notice of employees'** need to take leaves of absence. Thus, Claimant's actions were unreasonable in addition to being in violation of Carrier's rules. As such, Carrier properly found Claimant guilty as charged.

However, we are convinced that the ninety-day suspension assessed Claimant is **excessive**. Nothing in **the record** casts doubt upon the legitimacy of Claimant's need to take bereavement leave in January 1982. Also, Claimant did **return** promptly to work on January 27, 1982. In our view, then, a sixty-day suspension is appropriate. Claimant **is thereby** put on notice that he must properly advise **Carrier** officials if leave **is** desired. **However**, a ninety-day suspension is simply too **severe** for an infraction of this kind and under these circumstances. Accordingly, the claim is sustained only to the extent that the suspension is reduced from **ninety** days to sixty 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 23rd day of May 1985.