

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25547  
Docket Number CL-24833

George V. Boyle, Referee

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

PARTIES TO DISPUTE: (

(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (**GL-9656**)  
that:

1) Carrier violated the Clerks' Rules Agreement at **Bensenville**, Illinois when it charged, held investigation and assessed discipline of fifteen (15) days suspension on March 11, 1981 to Employee D. H. Green.

2) Carrier shall now be required to clear **Employee D. H. Green's** record of charges, investigation and subsequent discipline, and compensate him for all lost time caused by such charges, investigation and discipline.

OPINION OF BOARD: The **Claimant**, D. H. Green, is a twenty-two (22) year employee of the Carrier serving as Chief Clerk. On March 11, 1981, shortly after the start of his shift he was told that he was to assist in unloading supplies.

His Supervisor testified that the Claimant was notified twice to this effect and each time the response was, "that he was not going to help put away supplies. He said it was not his job."

The Claimant states that when instructed to unload the supplies he answered that he, "could not". Although he never informed his Supervisor of his reasons at that time, he states that he had a pulled stomach muscle and had been advised by his Doctor not to lift anything above twenty-five (25) pounds.

The Claimant was initially suspended for fifteen (15) days as a result of this incident. **This** penalty was subsequently reduced to "time served", a period of two (2) days.

The Employees claim that this disciplinary suspension was improper in that the charge of insubordination was not proved and the penalty was unwarranted in any case.

The Board is disinclined to agree. Probative and substantial evidence was presented at a proper hearing to attest to the Carrier's version of the facts. And it is not for the Board to resolve conflicts in testimony.

Moreover the Claimant's admission that he did not explain his reasons for being unwilling to handle the materials in question and his introduction of a medical slip dated four (4) days after the occurrence cannot help convince the Board of a miscarriage of justice.

The Carrier's disciplinary action, therefore, is warranted. Certainly a two (2) day suspension is not unduly harsh. A long service employee should know what is required of him and act accordingly. Thus the claim is denied.

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 Employee 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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest::

  
Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois this 26th day of July 1985.

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