

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25988  
Docket Number MW-25466

John E. Cloney, Referee

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees  
(  
(Northeast Illinois Regional Commuter Railroad Corporation  
(Former Chicago, Rock Island and Pacific  
Railroad Company)

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

(1) The Carrier violated the Agreement when it improperly suspended Machine Operator T. Petty from service for five (5) hours on October 6, 1982 (System File NIRCRC-P-720).

(2) The claimant shall be allowed five (5) hours of pay at his straight time rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: Machine Operator Petty was assigned to an 8:00 A.M. starting time working under the supervision of Mechanical Supervisor Sherman and Track Foreman Melesio. The Organization contends that prior to October 6, 1982, Claimant advised both Sherman and Melesio that he had to appear in Court on October 6, 1982, at 9:00 A.M. and would report to work when he was released. He reported at 11:00 A.M. He was not permitted to work. In a January 12, 1983, letter to the Organization the Carrier wrote:

"Claimant violated Rule 32 of the ... Agreement by reporting late without authorization from a supervisor."

The Carrier argues that while Claimant had evidently notified supervision of earlier Court dates, he failed to give notice of the October 6 appearance.

The Carrier relies on Rule 32 which states in part:

"Regular assignments will have a fixed starting time and the regular starting time will not be changed ... except as otherwise arranged between the employes and their immediate supervisor."

The Organization contends Rule 17, which entitles employes with 90 days of service to a fair hearing prior to discipline, is applicable. It also argues Carrier at no time denied it was aware of the reason for Claimant's three hour absence on October 6.

This Board has frequently held that in appropriate cases a hearing is not necessary prior to a one day suspension for tardiness. Third Division Awards 21598, 24428, 23294 and 22904. That principle standing alone would not dispose of a case in which the employe had received prior approval for an impending tardiness. The question is whether the evidence establishes this

was such a situation. Although the Organization now urges there was an "arrangement" for Claimant to report late we note that in the handling on the property the Organization contended only that Claimant had "advised his immediate supervisors" and thereby filled the requirements of long standing practice. The Carrier on the property contended Claimant's action was "without authorization from a supervisor" and now states that evidently Claimant had apprised it of similar earlier absences, but overlooked this one. It thus appears that in handling on the property the Organization had not asserted prior express approval and the Carrier had not denied prior notice. Unfortunately this is as far as examination of the record can take us as there is no evidence, as opposed to mere assertions, in support of either position. Accordingly, this Board does not find substantial evidence in support of the claim.

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy G. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of March 1986.

