

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26057
Docket Number MW-25995

Lamont E. Stallworth, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Northeast Illinois Regional Commuter Railroad Corporation

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

(1) The fifteen (15) days of suspension imposed upon Grinder C. Adams for alleged violation of Rule 'Q' was arbitrary, capricious, without just and sufficient cause and on the basis of unproven charges (System File NIRCRC-D-1095).

(2) The claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The instant dispute involves Rule "Q" of Form PE-01-RC (NIRCRC Employee Conduct), which states in pertinent part:

"Employees must report at the appointed time, devote themselves exclusively to their duties, must not absent themselves, nor exchange duties with, or substitute others in their place, without proper authority."

Claimant, a Grinder at the Chicago LaSalle Street Station, was observed on April 25, 1983, during regular working hours, two (2) blocks from his work site, walking in the vicinity of a Trailways Bus Depot.

Pursuant to timely notice of the charge, an Investigatory Hearing was held on May 11, 1983, which resulted in fifteen (15) days actual suspension assessed to Claimant.

The basic facts are undisputed. Claimant states that he left the property at 11:45 A.M. for approximately six (6) minutes to purchase a pack of cigarettes at the Bus Depot.

Claimant admits that he did not receive permission from any Supervisor before leaving fifteen (15) minutes prior to his assigned lunch period from 12 to 12:30 P.M.

The record clearly shows that Claimant acknowledges his work assignment required him to be on the property at all times.

His major defense is that he had to wait for other employes to finish their tasks so that he could perform his; and since there was not anything he could do at the moment, it was an expeditious time to make a brief departure.

Carrier contends that employees are expected to remain at assigned work areas, regardless of whether or not work is ready, unless proper authorization to leave the work area is obtained first. Claimant states he informed a co-worker of the purpose of his departure.

Carrier argues that there was work to do and under no circumstances does a co-worker have the authority to grant Claimant time-off for any reason. Carrier also argues it is not possible to confirm the length of Claimant's absence inasmuch as Claimant did not request permission to leave. Carrier maintains that a six (6) minute absence for the stated purpose of obtaining cigarettes is implausible, considering the Claimant walked four (4) blocks round trip, in addition to making a purchase at the Depot.

The Organization contends that whether the Employee was absent (6) minutes or 60 minutes is not important. Because the Claimant has an unblemished record of over eleven years of service, the Organization asserts the penalty is excessive.

In response, Carrier cites Second Division Award No. 8527 in which the Board held the Claimant's conduct, similar to that of Claimant in the instant case, was subject to suspension up to 30 days.

In the Board's opinion, the question is whether or not an employee has the right to leave a work site at will.

The evidence clearly shows that the Claimant was remiss in leaving his work area without permission for six minutes or longer. Carrier rightfully expects Claimant to remain at his assigned work area whether or not his work is ready. Just because a temporary interruption occurred, Claimant cannot substitute his own judgment for that of Carrier and dismiss himself from the premises, albeit a brief period.

The Board is persuaded Claimant's compelling reason for his absence might just as easily availed him of other alternatives, such as asking other employees for cigarettes or waiting until lunchtime.

Notwithstanding the infraction by Claimant, Carrier's assessment of 15 days suspension does not seem commensurate with an approximate six minutes unauthorized absence. The record indicates Claimant's work record is very good and his relatively brief absence did not jeopardize or delay completion of his work assignment that day.

In the Board's view, the penalty must be reasonably proportionate to the seriousness of the offense committed. Therefore, five days suspension should sufficiently impress upon the Claimant his obligation to remain at his work area and his responsibility to observe the work rules. This decision should not be construed that the Board condones such actions by an employee.

Accordingly, the Claimant is awarded ten days of pay at the rate in effect during the time he served the 15 days suspension.

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. Dover - Executive Secretary

Dated at Chicago, Illinois, this 11th day of June 1986.