

CORRECTED

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26570

Docket Number MW-26850

Elmer F. **Thias**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Consolidated Rail Corporation

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

1. The four (4) working days of suspension imposed upon **Trackman** W. J. **Cavanaugh** for alleged absenteeism on April 19, 1984, May **10** and 21, 1984 was unwarranted **and in** violation of the Agreement (System Docket CR-1173D)

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 parties are in dispute over the justification for a disciplinary suspension of four working days that Carrier imposed upon the Claimant. The Claimant held a position of **Trackman** in Rail Gang No. 101 when the incidents for which he was disciplined occurred. He had been employed for some six years without a prior disciplinary entry made on his record. However, he had been issued a letter of warning for unauthorized absenteeism on March 19, 1984.

The record indicates that the Claimant was absent on April 19, May 10 and May 21, 1984. Consequently, the Carrier notified the Claimant under date of May 24, 1984, to attend a Hearing on May 31, 1984, in connection with the following charges:

"Absenteeism: Thursday April 19, 1984
Thursday May 10. 1984
Monday May 21, 1984"

The Hearing was held on May 31. 1984, as scheduled. The Claimant was in attendance and he was **accompanied** by his Representative. The Hearing was conducted in a fair and impartial manner.

At the beginning of the Hearing the Claimant's Representative objected to the date of April 19, 1984, being included in the charges. The objection was noted in the record and the proceedings continued.

The Claimant was briefly interrogated about his absence on April 19, 1984, but his answers were not responsive to the questions being asked. His absences on May 10 and May 21, 1984, were also questioned and he responded by stating he had called the Production Engineer's office in **Philadephia** on those occasions.

The Carrier called its Assistant Foreman of Rail Gang No. 101 to testify at the Hearing. Among other things, the Assistant Foreman indicated that the Claimant's absences on April 19, May 10 and May 21, 1984, were recorded as unexcused. Additionally, he indicated that he had not received any phone calls from the Production Engineer's office.

Under date of June 11, 1984, the Carrier notified the Claimant that a four working day suspension would be imposed upon him and the offense outlined in the notice of discipline included all three days set forth above. Appropriate appeals were taken by the Organization on behalf of the Claimant. When appeal was taken to the Manager-Labor Relations, he recognized that the Carrier had not timely charged the Claimant with his absence on April 19, 1984. Nevertheless, the Manager-Labor Relations did not reduce the discipline which was imposed for three separate and distinct days of absence. Appeal to the Senior Director-Labor Relations produced the same result.

We believe the record is clear and conclusive that the Claimant was culpable for his absences on May 10 and May 21, 1984. The Claimant testified that he had called the Production Engineer's office in Philadelphia but he did not substantiate the fact the calls were made. Thus, the record here is similar on the issue to that stated in Third Division Award 26130 where we said the following:

. . . Moreover, although Claimant states that he was absent on March 27 and 28 because his mother was in the hospital, Claimant did not produce any documentation supporting that contention. **It** is fundamental that if an **employee** is absent from work, he must support his reasons with competent and acceptable evidence. See Second Division Award 6710."

The Claimant's absence on April 19, 1984, is different. The terms of the parties' Agreement did not permit inclusion of that absence in the Hearing which was held on May 31, 1984. This is recognized by both parties. Nevertheless, the April 19, 1984, absence was included in the charges. Both witnesses at the Hearing were questioned about that date and the date was included in the notice of discipline given to the Claimant. Consequently, justice requires consideration of the four working day suspension imposed as well as clearance of the April 19, 1984, date from the Claimant's record.

The record clearly establishes Claimant's responsibility for the absences of May 10 and May 21, 1984. A measure of discipline is, therefore, justified. Upon review and consideration of the entire record we find that the four working day suspension which **was** imposed by the Carrier, is excessive and that no more than a two working day suspension can be justified. Hence, we direct that the Claimant be paid his wage loss for the period of time he was suspended from service over and beyond the two working day suspension here prescribed. We also direct that the date of April 19, 1984, be deleted from his record.

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 30th day of September 1987.