

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 26852  
Docket No. MW-27078  
88-3-86-3-132

The Third Division consisted of the regular members and in addition Referee Elmer F. Thias when award was rendered.

(Brotherhood of Maintenance of Way **Employees**  
PARTIES TO DISPUTE: {  
(Houston Belt 6 Terminal Railway Company

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

(1) The fifteen (15) days of suspension imposed upon Section Laborer **J. C. Garza** for 'failing to protect your assignment on January 3, 1985 in violation of Maintenance of Way Bulletin #25' was unwarranted and without just and sufficient cause.

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

FINDINGS :

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the **employee** or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant had been employed by the Carrier for a period of approximately **fourteen** years and was assigned to a position of Section Laborer on the date of the incident here involved. He was absent from duty on January 3, 1985, but did not telephone his headquarters to explain the absence. Subsequently, the Carrier held a formal investigation on January 25, 1985, with the Claimant charged as follows:

. . . **responsibility**, if any, in connection with the report that you allegedly failed to protect your assignment on January 3, 1985, in violation of Maintenance of Way Bulletin No. 25."

Following the Investigation, the Claimant was assessed a fifteen day actual suspension. The Organization contested this discipline, taking appropriate appeals on the property. After those appeals were denied by the Carrier, the Organization timely submitted the dispute to this Board.

We are advised that the Claimant is a Hispanic and does not speak, write or understand the English language. He required the assistance of an Interpreter at the Investigation. There he explained that the reason for his absence on January 3, 1985, was that he could not get his truck to run. He further explained that he did not call the Roadmaster because he did not have a telephone. We would understand that the Carrier does not fault the Claimant's inability to report for work but maintains that his failure to contact the Roadmaster's office and obtain permission for his absence constitutes a clear-cut violation of Bulletin No. 25, justifying discipline.

The real issue in this dispute is the imposition of a fifteen day actual suspension for a first offense of the nature here involved. The Organization has consistently maintained that any suspension is too severe. On the other hand, the Carrier points out that the Claimant was thrice previously warned on similar occasions and progressive discipline is being utilized to emphasize the importance of compliance with its rules. However, **the Organization** objects to consideration of the prior warnings on the basis that they were not presented or discussed during the handling of the dispute on the property.

Our review of the record compels us to sustain the objection raised by the Organization and we dismiss the three warnings from our consideration of this dispute. However, we do recognize a degree of substance in the Organization's position that the suspension is **too** severe in a first offense. In our consideration of the entire record, it is our considered judgment that a ten day actual suspension should be substituted for that imposed and the Claimant compensated for his wage loss in excess thereof.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1988.