

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

(Brotherhood of Maintenance of Way **Employees**)
PARTIES TO DISPUTE: (**Northeast** Illinois Regional Commuter Railroad Corporation
(Former Chicago, Rock Island & Pacific Railroad Company))

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

(1) The fifteen (15) days of suspension imposed upon Track Foreman **W. B. Murray** for alleged violation of Rule 'Q' was arbitrary, capricious, unwarranted and on the basis of unproven charges (System File NIRCRC-D-1137/08-13-45R).

(2) The claimant's record shall be cleared 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.

By notice dated December 2, 1983, the Claimant was advised to attend an investigation to determine facts and place responsibility, if any, in connection with his alleged failure to devote himself **exclusively to his** duties on the morning of November 30, 1983. After postponement, the investigation was held on February 17, 1984. On February 22, 1984, the Claimant was advised that he had been found guilty as charged and he was assessed a fifteen (15) day **actual** suspension. At the time of the alleged incidents the Claimant held position as track foreman. Another employee, a track laborer, was also charged with involvement in the alleged incident but he is not party to this case. **The latter's** testimony, however, is part of the record before the Board.

According to testimony given at the **investigation** by the Carrier's Chief Engineering Officer, he saw the Claimant at approximately **8:20** on the morning of November 30, 1983, sitting **in** the Carrier's headquarters' building at Polk Street in Chicago eating breakfast. When queried about why he was there instead of covering his assignment the Claimant replied, according to this witness, that "...he was waiting for the rush to come in so he could go to 16th street to begin work...." A second Carrier witness, the Chief Mechanical Officer, offered substantially the same testimony. Both of these witnesses had seen the Claimant walking toward the headquarters' building carrying a food container at about **8:15** on the morning in question before they entered the building where they found him eating breakfast. According to the Chief Mechanical Officer, he and the Engineering Officer found the Claimant "...in the (building) with (a) Styrofoam container and bacon and eggs or breakfast there, eating...."

According to testimony by the Claimant, he was eating breakfast that morning while on duty, but he testified that it was not at **8:20** A.M. but closer to **7:45** A.M. His hours are **7:30** A.M. - 4:00 P.M. The track laborer who testified at the investigation, who had been seen by the same officers drinking orange juice with the Claimant while the latter was eating his breakfast, also testified that it was "...about **7:50 AM**" when the two officers saw them in the building.

There is a discrepancy in the record relative to when the Claimant and the track laborer had been seen sitting in the headquarters' building. By long-established precedent, however, this Board cannot set itself up as a "...**trier** of fact" to resolve **conflicting** testimony unless the testimony by Carrier's witnesses are clearly so devoid of "...**probity** that its acceptance would be per se arbitrary and unreasonable" (Third Division Award 21612; also Third Division Awards 10791, 16281, 21238). In the instant case there is, furthermore, little need to resolve conflicting testimony about when the Claimant was discovered eating his breakfast on company time. The Claimant admits that he was doing so. By his **own** testimony such behavior was also not within the guidelines of what the Claimant says was past practice on this property, **namely**, that "...it was okay to have a cup of coffee as long as it did **not** take all day...." Assuming this was past practice, and the Claimant is the only one who testified to that effect, his actions on the morning of November 30, 1984, went far beyond this.

Evidence of record relative to how difficult it was to carry out certain duties from **7:30-8:30** on that morning, because of train traffic, skirts the basic issue of this case which is why the Claimant, as track foreman, was eating breakfast when he should have been covering his assignment. That his actions in this case would have had direct repercussions on the behavior of the employees under his **control** make the violation of the Rule in question all the more reprehensible. In this respect the seriousness of the Rule violation is put in its proper perspective by **testimony** by the track laborer who stated at the investigation that:

"...when I first came out here I was told to follow my immediate supervisor and that's all I did in (this) situation."

Rule Q 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."

For the record, the Claimant **was Supervisor** of five employees assigned to his labor gang.

The discipline issued by the Carrier was reasonable and it will not be disturbed by the Board.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Oliver - Executive Secretary

Dated at Chicago, Illinois, this 17th day of March 1988.