

The Third Division consisted of the regular **members** and in addition Referee Eckehard Muessig when award was rendered.

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

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

(1) The twelve (12) days of suspension imposed upon Repairman J. E. Hester for alleged absence 'without permission on January 11, 1984 at Canton M.W. Shop, Canton, Ohio in that you failed to report for duty and you failed 'to properly report off' was unreasonable and unwarranted (System Docket CR-775-D).

(2) The claimant's record shall be cleared of the charge 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 employe 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.

Subsequent to an investigation held on February 8, 1984, the Claimant was found guilty of the charge that he was absent without permission on January 11, 1984.

The basic facts are not in dispute. The Claimant's Supervisor received a phone call at 8:08 a.m., on January 11, 1984, from a female who called on behalf of the Claimant and stated that he would not report to work because of illness. The Maintenance of Way Shop at Canton has a policy that if employees do not call in to be absent before 8:00 a.m., they are considered to be absent without permission. The Claimant testified at the trial held on this matter that he was aware of the 8:00 a.m. call-in policy.

The Organization contends that the call-in policy is more stringent and conflicts with that part of Rule 28(a) which reads: "An employee unable to report for work for any reason must notify his Supervisor as soon as possible." Certainly, the "as soon as possible" portion of the Rule 28(a) is subject to differing construction. However, given the Carrier's right to have regular attendance among its employees and its need to plan and perform its work, the establishment of a specific reporting time in reasonable proximity within the duty hours of the employee, cannot be said to be an unreasonable requirement.

The undisputed facts show that the Claimant was absent. The only question is whether the Carrier's application of its policy was a reasonable use of its discretion in this matter. The person who called in for the Claimant did not explain why she did not call before 8:00. The Carrier, for the first time, raised the issue of excessive absenteeism in its Submission to the Board and, thus, we will not consider that element in our deliberation on this matter.

While guilt to the charge has been established, we find, under all the circumstances, that the penalty assessed is excessive. Here, we give weight to the fact that the call-in on January 11, 1984, was only a few minutes beyond 8:00 a.m. and the fact that, had it been made earlier, the Carrier would have allowed the Claimant to properly mark off.


Therefore, we conclude that a five (5) day suspension would be more commensurate with the offense and the notion of progressive discipline.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1988.