

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company (Eastern Lines)

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

(1) The sixty (60) days of suspension imposed upon Track Laborer R. S. Martinez for alleged violation of Rule 604 was without just and sufficient cause and in violation of the Agreement (System File MW-86-40/448-51-A).

(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 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.

Claimant was absent from work for six days. When he attempted to return to duty he was suspended and cited for an investigation. After the investigation, he was disciplined with a 60 days' suspension. The Organization seeks to have the discipline modified on the basis that Carrier acted improperly when it suspended Claimant pending investigation, that he attempted to notify Carrier that he would be away from his job and, also, that he had a legitimate reason for being absent from duty.

We will first examine the issue of being withheld from service pending investigation. The last sentence of Article 14(a)1, of the parties Agreement deals with this matter. It reads:

"They may, however, in serious cases, be held from service pending such investigation."

There is no question that in serious disciplinary matters Carrier has license to hold an employee out of service pending his investigation. However, it is our opinion that being AWOL for six days, by itself, is not the type of "serious case" contemplated by the Rule.

The act of improperly withholding Claimant from service does not automatically prejudice the entire investigation, as originally contended by the Organization. In such situations, by well defined authority, employees are only entitled to payment for the period improperly suspended. See Third Division Awards 22934 and 25118. Accordingly, Claimant is entitled to payment for the work days lost, (less the date of the investigation), between the date held out of service and the date he was notified of his discipline.

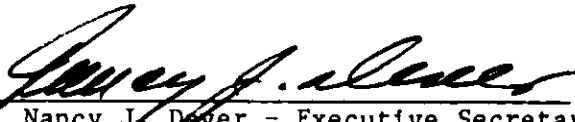
On the merits of the matter, there is no question that Claimant absented himself without proper authority for six consecutive work days. He claims that he attempted to phone his supervisors and seek permission to be absent but he was unable to complete the call. In this regard we note that he attempted to call but once, on the first date of absence, and this call was placed from a location nearly 400 miles away from his work site. This conduct does not indicate that a serious attempt was being made to secure permission to be absent. In fact, if anything, this single attempted call, occurring over eight calendar days demonstrates a basic disregard for one's obligation as an employee to protect his job or secure proper permission to be absent. Accordingly, discipline for this established instance of AWOL is not inappropriate.

Levels of discipline assessed in such cases cover the complete scope: warnings, reprimands, brief suspensions, long suspensions and even permanent dismissal. Obviously many factors are involved. In this case, it was Carrier's judgment that the violation warranted a suspension of 60 days. We will not substitute our judgment for that of Carrier as to whether circumstances warranted this level of suspension or something else. The suspension, though, was retroactive to the date Claimant was charged and initially withheld from service. Earlier we indicated that during this period Claimant was improperly withheld from duty and awarded compensation accordingly. Therefore, the 60 day suspension shall be reduced by the number of these days.

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 25th day of April 1988.