

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

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
PARTIES TO DISPUTE: (  
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10104) that:

1. Carrier violated the provisions of the current Clerks' Agreement at Gallup, New Mexico on/or about March 21, 1985, when it wrongfully suspended Mr. R. L. Hupp for forty-five (45) days, and

2. Carrier shall now compensate Mr. R. L. Hupp for eight (8) pro rata hours pay each day on February 19, 20, 21, 22, and 23, 1985 at the rate of Crew Clerk Position No. 6098 at \$101.97 per day, and

3. Carrier shall now compensate Mr. R. L. Hupp eight (8) pro rata hours pay each day commencing February 19, 1985 through and including April 4, 1985 at the rate of Crew Clerk Position No. 6098 at \$101.97 per day in addition to any other compensation he may have been entitled to as a result of such violation of Agreement rules, and

4. Carrier shall now remove any reference to the formal investigation held on March 4, 1985, from the personal record of Mr. R. L. Hupp."

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 employes involved in this dispute are respectively carrier and employes 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.

A Notice of Investigation dated February 25, 1985, required Claimant's presence:

"concerning your alleged absence without proper authority commencing February 19, 1985 and subsequent dates, so as to determine the facts and place responsibility, if any, involving possible violation of Rules 2, 13, 14 and 15 of the General Rules for the Guidance of Employees . . . ."

From the Investigation it appeared Claimant, who has a seniority date of September 2, 1975, had been displaced from his position at Seligman, Arizona, and bumped to a position at Gallup, New Mexico, effective February 19, 1985, at 3:45 P.M. On that date he called the Manager to state he needed extra time for relocation and that he had made the necessary arrangements through his Vice General Chairman and the Carrier's Chicago Office. The Manager testified:

"I would say that he was trying to request it but, I told him I couldn't allow it because I had no knowledge of it. He said he had gotten authority to be off, but I had to question it because I had no knowledge of it. I had to check if he had gotten authority to be off from the Superintendent's Office. I couldn't take it upon myself."

The Manager "expected" Claimant to call back, but did not tell him to do so while Claimant states he felt no need to because he believed the Manager's inquiries would confirm that he was entitled to the time.

On the property Carrier contended:

"Claimant Hupp was entitled to up to five work days for his relocation, but he still was required to obtain authority to be absent . . . ."

As a result of the Investigation Claimant was suspended for 45 days.

Carrier is clearly correct that Claimant was required to obtain proper permission for use of relocation time. Carrier apparently concluded from the Investigation that proper permission had not been obtained and we will not disturb this factual finding. We are convinced, however, that Claimant incorrectly believed his absence was proper. His belief, due in large extent to a breakdown in communication, does not excuse his actions, but does mitigate them. We believe in the circumstances the 45 day suspension was excessive and we shall reduce it to 30 days.

#### A W A R D

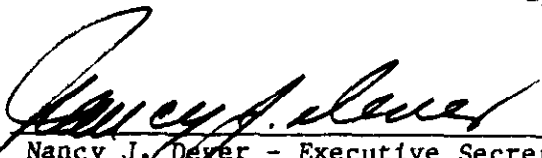
Claim sustained in accordance with the Findings.

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Award No. 27284  
Docket No. CL-27243  
88-3-86-3-332

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 12th day of August 1988.