

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: (
(The Kansas City Southern Railway Company

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

(1) The ninety (90) days of suspension imposed upon Track Laborer S. D. Roberson for unauthorized absence from duty on July 17, 1984 was arbitrary, capricious, unwarranted and without just and sufficient cause (Carrier's File 013.31-311).

(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 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.

On August 31, 1984, the Claimant was notified of an investigation to determine facts and place responsibility, if any, in connection with his absence from work on July 16, 1984. According to the notification the Claimant violated Rule Q. This Rule states the following:

"Employees must report for duty at the prescribed time and place, remaining at their post of duty, and devote themselves exclusively to their duties during their tour of duty. They must not absent themselves from their employment
..."

On September 21, 1984, the Claimant was advised that he had been found guilty as charged and he was assessed a ninety (90) day suspension.

A review of the record shows that the Claimant does not deny that he was absent from work on the day in question. The Claimant argues, rather, that the Supervisor failed to give him the proper telephone number. As a consequence, the Claimant was unable to call his Extra Gang Foreman after he had lost his way to the work site.

There is no issue to be resolved with respect to whether the Claimant showed for work or not. On merits the Board must conclude that the Claimant was in violation of the Rule at bar. The only remaining issue is whether the infraction, and the circumstances surrounding it, warrant the discipline issued by the Carrier.

The Board has gone on record on numerous occasions to the effect that discipline is a managerial prerogative and that the Board will not substitute its judgment on these questions. On the other hand, the Board has also ruled that extenuating circumstances, when they are present, may be used by the Board to determine whether the discipline was excessive.


Although the Claimant ought not to have gotten lost on his way to work, such error cannot be totally held against him in view of his inability to call supervision because he was not given the proper telephone number. Such facts do not relieve the Claimant of the responsibility to foresee problems such as the one in question, and their proper solutions, in order that he be at his assignment on time. Such facts can serve, however, as extenuating circumstance to permit conclusion that the discipline levied was arbitrarily severe. It is the opinion of the Board that the record before it, in this case, warrants such conclusion. The discipline shall, therefore, be reduced to thirty (30) days' suspension. The Claimant shall be compensated by the Carrier for any days levied against him in excess of this.

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 2nd day of March 1989.