

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

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(Portland Terminal Railroad Company

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

(1) The sixty (60) days of suspension imposed upon Sectionman R. S. Mendez for alleged violation of General Rule A, Rules 702 and 702(B) and Bulletins No. 1 and No. 2 on April 2, 1985, was unwarranted, on the basis of unproven charges and in violation of the Agreement (Carrier's File BMWE 502).

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

The Bulletins in question are as follows:

"BULLETIN
No. 1

MAINTENANCE OF WAY EMPLOYEES

The regular shift of all Maintenance of Way employees is between the hours of 7:30 a.m. and 4:00 p.m., with one-half hour for lunch, Monday through Friday.

BULLETIN
No. 2

MAINTENANCE OF WAY EMPLOYEES

There will be no laying off unless permission has been received from the Track Foreman or Engineer, unless absence is due to sickness and/or an emergency.

If you are unable to report for your regular shift because of sickness or an emergency, you are responsible to inform Foreman Kasahara or Engineer Mathison prior to the beginning of your shift.

Foreman Kasahara may be reached on 222-7403.

Engineer Mathison may be reached on 223-9489.

Permission to lay off cannot be granted by calling the Board Clerk in the Guilds Lake Yard Office. Henceforth, refrain from calling the Guilds Lake Yard Office."

Claimant was absent from work on April 2, 1985. He did not contact his Supervisors to obtain permission to be absent, as required by Bulletin No. 2. Claimant instructed his wife to contact his Supervisor prior to the beginning of the shift on April 2, 1985, and she did so, informing the Carrier that Claimant would be absent that day. It appears that no emergency or illness was involved that would relieve Claimant from the obligation to seek permission to be absent in accordance with the Rules.

Although it is clear Claimant violated the Rules and is subject to discipline, the circumstances of this case would indicate that Claimant attempted to notify the Carrier of his intentions, although he had no right to assume he would be granted permission to be absent. The fact that Claimant acted in his own best interest without regard to the Rules or the Carrier's interest justifies a suspension, but in the present set of circumstances, this suspension should be reduced to thirty (30) 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. Dewar - Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1989.