

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31802
Docket No. MW-32304
96-3-95-3-135**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Burlington Northern Railroad Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The fifteen (15) day suspension imposed upon employe J. M. Hocker for his alleged absence without proper authority on July 29, 1993 was unwarranted, on the basis of unproven charges and in violation of the Agreement. (System File S-P-516-LC/MWB 94-03-15AD).**
- (2) As a consequence of the above-stated violation, 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 employee 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 were given due notice of hearing thereon.

On August 11, 1993, Claimant was notified to appear for an Investigation on August 17 in connection with his absence without proper authority on July 29, and turning in eight hours' straight time pay while absent from duty on July 29. The Investigation was postponed to and held on August 24. On September 22, 1993, Claimant was notified that he had been found guilty of violating Rule 530(A) and was suspended for 15 days.

The Organization contends that there was no substantial evidence to support the finding made on the property that Claimant violated Rule 530(A). The Organization further objects to certain procedural errors with which it charges Carrier.

Carrier maintains that Claimant was given a fair Hearing and that all of his due process rights were respected. Carrier contends that its finding of guilt was supported by substantial evidence.

The Board reviewed the record carefully. We find that Carrier's finding of guilt is not supported by substantial evidence. The testimony indicates that the Section Foreman had granted Claimant permission to take a vacation day on July 29, 1993. Furthermore, although Claimant reported eight hours' pay for July 29, rather than reporting a vacation day, the record does not contain substantial evidence that the report was anything but a clerical error.

Because we will sustain the claim on its merits, we need not reach the procedural issues that the Organization raised. However, we feel compelled to observe that the Organization objected to Carrier's failure to provide Claimant's representative with a copy of the notice of discipline and with a complete copy of the Investigation transcript in a timely manner. We note that this is not the first time that Carrier failed to perform these duties as required by the Agreement. Prior Awards have warned Carrier that if it persists, it risks a sustaining Award on procedural grounds alone. We reiterate that warning.

AWARD

Claim sustained.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 26th day of December 1996.