

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32991
Docket No. MW-33768
98-3-97-3-235**

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Montana Rail Link, Inc.**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The thirty (30) day suspension assessed Mr. W. R. Myrstol for his alleged failure to report for work as a machine operator on June 12, 1996 was without just and sufficient cause and excessive punishment (System File MRL-131).**
- (2) Machine Operator W. R. Myrstol shall now be allowed the remedy prescribed by the parties in Article 13 of the Agreement.”**

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.

Claimant with approximately 22 years of service was assigned to report for duty on June 12, 1996 at 6:30 A.M. However, because he became ill overnight with the flu, he slept until approximately 10:00 A.M. at which time he awoke and reported his absence. The record reflects that he did in fact awake at approximately 6:00 A.M., but that he did not attempt to report for duty or to notify the Carrier that he would be absent that day.

In its Submission to the Board, the Organization argued that the claim should be sustained because the Claimant could not notify the Carrier of his absence either because of his frail physical condition or the fact that he did not have a telephone in his camper. Alternatively, it contends that even if the Claimant is guilty of the misconduct with which he was charged, a 30 day suspension is excessive.

First, although it is true that the Claimant was ill on the day in question that does not excuse his obligation to report his illness. Moreover, the Carrier is not to be expected to bear the burden that the Claimant had no telephone in his camper in order to report his illness. The plain fact of the matter is that the obligation on both counts falls squarely on the Claimant's shoulders and he failed to fulfill that obligation. We are of course aware that under some circumstances an obligation can be excused. However, this case does not present any such situation. The record clearly shows that the Claimant awoke approximately 30 minutes before his start time, yet he made no effort to contact the Carrier to report his absence. Thus, not only did the obligation fall to the Claimant in the first instance, but even when presented with an opportunity to discharge that obligation, he failed to do so.

With regard to the penalty imposed, we find that in light of the Claimant's record (one censure, a five day suspension, and two 15 day suspensions between November 1993 and March 1995) the penalty was proportionate to the misconduct.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

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

Dated at Chicago, Illinois, this 23rd day of December 1998.