

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36611
Docket No. MW-36726
03-3-01-3-230

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company [former Southern
(Pacific Transportation Company (Western Lines))

STATEMENT OF CLAIM:

- “(1) The discipline [Level 3 with a five (5) day actual suspension] imposed upon Mr. S. M. Thomson for alleged violation of Union Pacific Rule 1.13 in connection with his absence on December 6, 1999 while employed as a B&B steelman was without just and sufficient cause, unwarranted and in violation of the Agreement (Carrier’s File 1229794 SPW).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. M. Thomson shall now ‘...be compensated for net wage and benefit loss suffered by him, and the alleged charge(s) be expunged from his personal record.’”

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.

The Claimant was employed by the Carrier since November 23, 1992. The steel bridge gang on which the Claimant was assigned normally worked from 7:00 A.M. to 3:30 P.M. Monday through Friday. On December 3, 1999, however, he was instructed by his supervisor to report at 4:00 A.M. on the following Monday. On that day, he did not report at 4:00 A.M. Instead, he called in at 6:30 A.M. He told his Foreman that he was sick. The Foreman had previously called the Director Bridge Maintenance and informed him that the Claimant was not at work and had not called in. The Foreman therefore called the Director Bridge Maintenance again and told him of the Claimant's call.

By letter dated December 14 the Claimant was charged with failure to report for duty at 4:00 A.M. on December 6, 1999, as instructed, and failure to notify his supervisor until 6:30 A.M. that he was sick and not coming to work. An Investigation was held on January 3, 2000. On January 25, the Hearing Officer found the Claimant guilty of violating Rule 1.13 as charged and assessed a Level 1 discipline. In accordance with the Carrier's UPGRADE policy, as the Claimant had a prior Level 2 discipline on his record, he was assessed a Level 3 discipline, which resulted in a five day suspension.

Rule 1.13, Reporting and Complying with Instructions, reads as follows:

"Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties."

The Carrier argues that Rule 1.13 requires that employees report to work. Further, the Claimant offered no proof that he was sick. The decision of the Hearing Officer, therefore, was not arbitrary or capricious and so should be upheld.

The Organization argues that the Claimant was not disciplined for calling in late, but rather for being sick.

In making a determination, it is first important to articulate the exact question before the Board. The Carrier made clear that "[t]he Claimant was not disciplined for calling in late; nor would he necessarily have been excused if he had called his

supervisor prior to his reporting time. He was disciplined because he failed to show up for work as instructed."

It is undisputed that the Claimant failed to report at 4:00 A.M. as instructed. Nor was he excused from reporting at 4:00 A.M. The Carrier asserts that he would not necessarily have been excused had he called prior to his reporting time, the implication being that perhaps he would have. The Board is not required to determine whether the Carrier would have been unreasonable in refusing to excuse the Claimant's absence due to illness had he called in and requested his absence prior to his scheduled reporting time. Had the Claimant requested his absence, the Carrier could have evaluated his request and made a decision as to whether his absence was acceptable. We note, for instance, that in another case decided this day, Third Division Award 36612, the Claimant did call in advance to request approval for his absence. The Carrier evaluated the request and, in that case, denied his request based upon the circumstances. Having failed to call in as well as offer no proof to support his claim of illness, he therefore violated Rule 1.13 when he failed to report to work as instructed. Thus, discipline is warranted.

AWARD

Claim denied.

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 29th day of July 2003.