

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38217
Docket No. MW-39119
07-3-05-3-514

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

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [thirty (30) day suspension] imposed under date of October 11, 2004 upon Mr. B. Hubbard in connection with his absence from his position on System Curve Patch Team 5XC6 on July 12 and 13, 2004 was excessive, unwarranted and in violation of the Agreement [Carrier’s File 12(04-1145) CSX].**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. B. Hubbard shall receive the remedy prescribed by the parties in Rule 25, Section 4.”**

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 did not report for his Machine Operator assignment on July 12 and 13, 2004, and neither his immediate Supervisor, Foreman, nor Assistant Foreman

received a report on either day that he would be off work. His assignment was to run the rail drill for his team, which was working on the River Line near Suffern, New York. The Claimant reported for his assignment as scheduled on July 14, 2004. A written policy on attendance distributed to all employees, and which the Claimant acknowledges receiving, states in bold caps, "AN EMPLOYEE UNABLE TO REPORT FOR WORK FOR ANY REASON MUST NOTIFY HIS SUPERVISOR AS SOON AS POSSIBLE." The policy further states, "SPT employees who fail to notify their supervisors in a timely manner that they are not able to report to work and employees who are regularly absent, will subject themselves to the steps set out in the IDPAP, up to and including investigations and disciplinary action."

The Claimant was instructed to attend a formal Investigation to determine the facts in connection with his unexcused absences on July 12 and 13, 2004. At the Hearing he gave the following testimony: He was off work on vacation on Sunday, July 11, 2003, and while cutting bushes that day at his ex-wife's place in the Cleveland, Ohio, area, his "allergies kicked up," his eyes swelled up and closed, and he could not drive a car. He lay down to see if the swelling would go down; he awoke at 4:30 in the morning, and his eyes were still swollen. He did not have the cell phone number of his Supervisor, his Foreman, or the Assistant Foreman Timekeeper with him. He therefore called information, got the telephone number of the hotel, called and left a message with the woman who answered. He told her that he needed to get a message to Tom Fox (the Assistant Foreman Timekeeper) that his name is Brian Hubbard, that he would not be in that day or probably the next day, and that he would try to make it to the Book of Rules classes on Wednesday. The Claimant made no further attempt that day or the next day to communicate with any Supervisor or Foreman about his absences on the two days.

The Claimant stated that 18 months earlier he had left a message at a different hotel in a different city for Tom Fox to report an absence, and Tom Fox did not get the message. It was only after the Claimant returned to work from the absence and said that he had called the hotel did the Assistant Foreman check with the hotel clerk and find that the Claimant had called in that time.

On July 14 the Claimant said to Assistant Foreman Fox, "Didn't you get my message?" Fox said, "What message?" The Claimant told Fox that he had called the hotel at 4:30 in the morning and left a message with the front desk. Later Fox went to the front desk and asked the clerk if the Claimant left a message. The clerk said that he was not there at the time, but he would check in the computer for any messages. There was no message from the Claimant.

After the Hearing, the Claimant was notified that "the facts support and confirm the charges against you, as you did not successfully notify your manager, foreman, or assistant foreman prior to your absence on July 12 and 13, 2004." The discipline

assessed was a 30 calendar day suspension. In determining the degree of discipline the Carrier took into consideration not only the latest incident, but also the Claimant's personnel record, which included a May 18, 2004 ten day suspension for absenteeism, a September 16, 2003 General Correspondence charge letter for unexcused absence, and a May 1, 2003, Coaching/Counseling/ICI for AWOP.

It was the Claimant's responsibility to make sure that notification of his absence was received by his Supervisor, Foreman, or Assistant Foreman. His personal experience on a prior occasion should have made him aware of the unreliability of leaving a message with a hotel clerk. Yet, when he took a vacation day off, he did not make sure that he would have with him the telephone number of a Supervisor or Foreman in the event he had to miss work because of illness or other emergency. Moreover, his own account of the facts acknowledges that the message he allegedly left with the hotel clerk was not that he would be absent on July 13, but that he would "probably" also be absent the second day. Nevertheless he made no effort to call back and attempt to reach the Supervisor or Foreman to find out if his alleged message had been received or to confirm that he would, in fact, take off the second day too. The Claimant did not conduct himself in a responsible manner in respect to his absences of July 12 and 13, 2004. He acted in violation of the Carrier's attendance policy, and the degree of discipline was appropriate in light of his prior personnel record involving attendance infractions.

A W A R D

Claim denied.

O R D E R

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

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

Dated at Chicago, Illinois, this 25th day of June 2007.