



Award No. 14331

Docket No. TE-14200

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Levi M. Hall, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYES UNION
(Formerly The Order of Railroad Telegraphers)**

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile & Ohio Railroad, that:

1. Carrier improperly suspended Operator W. L. Sheley from his position November 8 through 23, 1962.
2. Carrier shall be required to compensate W. L. Sheley for all wages lost during this period of time.

OPINION OF BOARD: Claimant, W. L. Sheley, was assigned to the position of Operator-Leverman on the second trick from 4:00 to 12:00 Mid-night. On November 8, 1962, he arrived at work at 6:55 P.M. two hours and fifty-five minutes late. Claimant was charged by Carrier with a violation of the operating rules and ordered to report for investigation. Investigation was held on November 13 and on November 16, 1962, he was removed from the service. On November 21, 1962 he was reinstated. Claimant contends the discipline was unwarranted and in excess of the proper exercise of managerial prerogative.

The fact that Claimant was suspended from work pending investigation and that this was in violation of Rule 25 of the Agreement was raised for the first time in the Employee's submission so consequently will not be considered here. Furthermore, during the investigation Carrier indicated that Claimant's "absentee record and employment record have nothing to do with this investigation" but subsequently offered the transcript of a prior investigation on a prior charge of absenteeism. This testimony was ignored in arriving at a decision in the instant case.

That Claimant was absent from work from 4:00 P.M. to 6:55 P.M. on November 8, 1962, was undisputed. At the investigation held on November 13, 1962, Claimant gave no plausible explanation of his absence. Under all the facts and circumstances, there is nothing in the record to indicate there was a failure on the part of Carrier to properly exercise its managerial prerogative. Nor is there anything to indicate the action of Carrier was arbitrary or capricious or that the length of the punishment was excessive.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of April 1966.