

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20198
Docket Number MW-20184

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Kansas City Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
that:

(1) The suspension of four (4) days imposed upon Laborer
Albert Como, Jr. was unwarranted and in violation of the Agreement
(System File 013.31-115).

(2) The personal record of the claimant be cleared of said
suspension and he be allowed thirty-two (32) hours of pay at his
straight time rate in accordance with Rule 13-2.

OPINION OF BOARD: This discipline case is similar to the one in
Award 20197 in which an absence due to
sickness led to a four day suspension under Rule 5.1 of the Agreement
and Rule 25 of Carrier's Rules and Instructions. Here, the absence
leading to discipline was allegedly caused by a disabled automobile.
In both dockets the Claimants were absent on Monday, a work day,
under a rule which required employees to give notice to Carrier of
the reason for an absence not later than "the close of the third day
they are unable to report." (Rule 5.1 of the Agreement) By using
calendar days, which included the two rest days prior to Monday, the
Carrier concluded that the Claimant's giving notice on Tuesday was the
fourth day and therefore not in compliance with the rule. The Employees
say the Tuesday notice was satisfactory because the rule refers to
work days rather than calendar days.

In accord with our Opinion in Award 20197, we
shall first state that Rule 5.1, being an Agreement Rule, is para-
mount to Rule 25 which is a Carrier unilateral operating rule. We
also conclude that work days are contemplated by the three-day notice
provision of Rule 5.1 and, thus, we reject Carrier's theory that the
period for notice is computed by reference to calendar days, including
rest days. Rule 5.1 reads as follows:

"Employees will not lay off without obtaining
permission from their immediate superior, except on
account of sickness or for other good cause, in which
event they shall notify their immediate superior not
later than the close of the third day they are unable
to report. Except also that foremen will notify their
superiors immediately, preferably in advance, in order
that relief may be provided."

We come now to the facts of this case as reflected in the hearing record. The Claimant here, like the Claimant in Award 20197, worked on Friday, October 29, 1971, observed rest days of Saturday and Sunday, and, without notice to Carrier, did not report for work on Monday, November 1. When he reported for work on Tuesday, he was given a written suspension of four days for laying off without permission. The reason for suspension, as testified to by his Foreman, was that: "He had missed over three days. He reported back the fourth day." The Foreman also said that Claimant gave sickness as the reason for the absence. However, the Claimant denied this, saying that he had had car trouble and that he had no money to cab to work. Carrier's Roadmaster confirmed that, a few days after the absence, the Claimant had said car trouble had caused the absence.

In appraising the foregoing, and the whole record, we conclude that Claimant's absence was due to car trouble. Despite some testimony that Claimant had changed his story from sickness to car trouble as the cause of absence, Claimant's statement about car trouble was never seriously challenged by the Carrier. We conclude further that Claimant gave Carrier notice of his car trouble within the time limit of Rule 5.1, for, as previously indicated, the three-day notice provision of the rule refers to work days rather than to calendar days. Consequently, Claimant's giving notice to Carrier on the day following his absence constituted compliance with the rule. Finally, we note that, while the suspension was initially based on Carrier's calendar day theory, the Carrier also contends that Claimant's car trouble was not "good cause" within the meaning of Rule 5.1. We reject this contention also. In the absence of a clear showing of alternate transportation to work, it could not reasonably be said that car trouble is not good cause for a one-day absence from work. The role of the automobile in American work life is too well known to require discussion.

In view of the foregoing, we shall sustain the claim.

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

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

The Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1974.