

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22006
Docket Number MW-21838

John P. Mead, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Colorado and Southern Railway Company

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

(1) The suspension of thirty (30) days imposed upon Trackman Larry Long was improper, discriminatory and without just and sufficient cause (System File C-18-75/MW-374).

(2) The personal record of Claimant Long be cleared of said suspension and reimbursement be made to him for wage loss suffered because of said suspension (Rule 26c).

OPINION OF BOARD: Claimant's thirty (30) days suspension, which he is now contesting as "improper, discriminatory and without just and sufficient cause," was imposed by the Carrier for his failure to comply with BN Safety Rules 665 and 667, reading:

"665. Employees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties with or substitute others in their place without proper authority."

"667. Employees must comply with instructions from the proper authority."

On the last day of the work week preceding a three day holiday weekend, essential equipment became inoperative and claimant requested permission to take the afternoon off to attend to personal business.

The permission was not granted, but claimant informed his foreman that he was going to leave anyway. He was told to "leave at his own risk," which he did.

Four other employees who also left work were suspended for 15 working days following an investigation for violation of Rule 665. Claimant requested postponement of his investigation and the disciplinary action against him followed a hearing held one week later.

The Board finds that comparison of the circumstances involving the other four employees leaving work with the claimant's actions, does not justify the substantially more severe penalty assessed against claimant. It is clear that claimant left work without permission, and was subject to disciplinary action. The record is not convincing that claimant's actions were insubordinate, warranting the additional 15 days suspension. "Leave at your own risk" is not the clear-cut type of instruction upon which insubordination action is normally based, and this Board finds that the 30 days suspension was excessive.

Since one week of the 30 days suspension period included the postponement of the investigation requested by the claimant, the Board considers a 20 work day suspension to be appropriate and decides that claimant's suspension shall be reduced to 20 working days.

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;

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

That the suspension of thirty working days assessed against claimant was excessive.

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Claim sustained to the extent indicated in the OPINION AND FINDINGS.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 14th day of April 1978.