

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22193
Docket Number CL-21914

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Chicago and North Western
(Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8346, that

1. Carrier violated the Agreement Rules, particularly Rule 21 (Discipline) when after an investigation was held on April 26, 1971 Mr. Larry Weir, Yard Clerk on the Wisconsin Division, was assessed a 60-day discipline suspension account alleged failure to protect his regular assignment, Job 037.

2. Carrier shall clear Mr. Larry Weir's record concerning the suspension, and compensate him for all time lost account of same, including any losses in connection with fringe benefits.

OPINION OF BOARD: Following an investigative hearing on April 26, 1971, in which Claimant had full opportunity to present his position, Claimant was given a sixty-day disciplinary suspension for:

"...responsibility in connection with your failure to protect your assignment Job 037, Joint Yard Clerk, South Janesville, Wisconsin on April 19 and April 20, 1971"

The Claimant had been working on Job 037 from March 26 and, upon written statement of April 15 that he did not wish to continue on this assignment, he was specifically directed by two Carrier representatives to continue in the position. Claimant nevertheless failed to report for such assignment on April 19 and 20.

The record shows considerable confusion about job assignments and the Claimant's job rights at the time. Nevertheless, the undisputed finding is that he failed to protect an assignment for two days as directed, quite apart from the contractual provisions which might or might not have applied to continued assignment on Job 037.

The Board finds that the Carrier is correct in its determination after an investigative hearing that Claimant failed to protect an assignment as directed. The Board finds, however, - given the surrounding circumstances - that the sixty-day disciplinary penalty was excessive. The appropriate penalty is a thirty-day disciplinary suspension. The Claimant is therefore entitled to be made whole for loss of pay suffered during the latter 30 days of his disciplinary suspension.

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 the Agreement was violated.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1978.

