

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22464
Docket Number MW-22342

Robert A. Franden, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Illinois Central Gulf Railroad

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

(1) Welder R. E. McIntosh was unjustly treated when he was suspended from service on August 30, 31 and September 1, 1976 because of his inability to work on August 27, 1976.

(2) The hearing requested by the claimant was not timely held.

(3) Because of either or both (1) and/or (2) above, the claimant shall be allowed three days' (24 hours) pay at his straight-time rate (System File SL-193-T-76/134-296-222 Spl. Case No. 1070 MofW)."

OPINION OF BOARD: Claimant was suspended from the service of the Carrier for three days due to his failure to report ahead of time that he would not be reporting to work one day due to complications which arose due to the death of his father. The claimant called in fifty minutes after his starting time at which time he was informed by his foreman of the suspension.

The applicable rule in the instant dispute is Rule 33.

"RULE 33. DISCIPLINE

"(a) Employees shall not be disciplined* or dismissed until after a fair and impartial hearing. Notice of such hearing, stating the known circumstances involved, shall be given to the employee in writing within 10 days of the date that knowledge of the alleged offense has been received by the division engineer or his authorized representative.

"(b) Hearing shall be held within 10 days from the date of the notice to the employee of the alleged

"offense by an officer of the carrier unless for good cause additional time is requested by the carrier, his representative, or the employee, provided his representative has knowledge thereof."

* * * *

"* Foremen will have the right, when the circumstances dictate to suspend an employee working under their jurisdiction, without a hearing. For the first offense a foreman is limited to assessing a one-day suspension, for a second offense a foreman can suspend an employee up to three days and for subsequent offenses the foreman can suspend an employee up to five days. If an employee feels he has been unjustly treated, he may request a hearing within ten days of the date the suspension begins."

The claimant requested a hearing as provided in the asterisk provision dealing with suspensions by foremen. The request was made on September 1, 1976. The hearing was held on October 22, 1976.

The claimant takes the position that the ten day time limit set out in paragraph (b) of Rule 33 applies to hearings requested under the asterisk provision and that the hearing was therefore not timely held. The Carrier takes the position that there is no time limit for the hearing called for in the asterisk provision.

Assuming, arguendo, that the Carrier's interpretation of the rule is correct it would still be incumbent upon it to provide the hearing within a reasonable time. Fifty-two days between the hearing request and the hearing is an unreasonable length of time. The hearing was not timely held. We will 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 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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1979.