

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22842
Docket Number MW-22634

Richard R. Kasher, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(National Railroad Passenger Corporation

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

(1) The suspension of thirty (30) days imposed upon Trackman W. J. Smith (Local Chairman) for allegedly 'walking off the job without permission on August 5, 1977' was without just and sufficient cause, unwarranted and on the basis of unproven charges.

(2) The claimant's record shall be cleared of the charge placed against him and he shall be reimbursed for all wage loss suffered."

OPINION OF BOARD: Claimant was assessed a 30-day suspension on August 30, 1977, for allegedly walking off the job without permission on August 5, 1977. Carrier imposed the discipline following a hearing held on August 23, 1977, at which it was determined that Claimant violated the standing rules concerning absence from duty for the purpose of attending to official union business.

On August 5, 1977, Claimant was assigned as Watchman for the North Philadelphia Interlocking Gang, 8:00 a.m. to 4:30 p.m. shift. At a few minutes before 10:00 a.m., on August 5, 1977, a group of six of Claimant's constituents called Claimant and informed him that they needed his immediate presence for urgent union business at the 30th Street Station. In his haste to reach the 30th Street Station by the next available train, the '957 Trenton Local,' Claimant asked a qualified watchman to relieve him. Claimant also asked the watchman to inform his foreman that Claimant was on official union business.

The standing rules concerning absence from duty required Claimant to inform his foreman that he would be absent for official union business. Claimant was aware that any absence not prearranged with his foreman would be dealt with as an unexcused absence.

Claimant defends his actions of August 5, 1977, by the urgency of the situation and by the fact that his foreman was not on the tracks when the call came in from Claimant's constituents. Claimant found

himself in a precarious position: Should he leave immediately and fulfill his responsibilities as a representative? Or should he delay his departure and follow the rule on absences from duty by first notifying his foreman? By choosing the former, Claimant failed to fulfill his responsibilities as an employee. This failure cannot be condoned.

Although the record supports a finding of Claimant's guilt, the 30-day suspension should be reduced to a 15-day suspension. In light of mitigating circumstances, including the foreman's unavailability, the urgency of the circumstances and the fact that Claimant did find a replacement, suspension should be reduced as stated above.

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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1980.