

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22904
Docket Number MW-22859

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Fort Worth and Denver Railway Company

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

(1) The Carrier violated the Agreement when it suspended Trackmen M. W. King and A. E. Gilbreath from service for one (1) day (January 25, 1978) without benefit of an investigation (System File F-2-78).

(2) The claimants now be compensated for all wage loss suffered in accordance with Rule 26(c)."

OPINION OF BOARD: Claimants, A. E. Gilbreath and M. W. King, at the time of this dispute, were assigned as track laborers to Extra Gang No. 1, working in the vicinity of Bellview, Texas. They were scheduled to work 8:00 A.M. to 4:30 P.M., Monday through Friday. On Wednesday, January 25, 1978, Claimants arrived at the gang location approximately forty (40) minutes late. They explained that they were detained because of a freezing rain which caused them to drive more slowly than usual. Foreman Martin rejected Claimants' excuse and informed them that they would not be permitted to work that day.

The Organization contends that Martin's action constituted a one-day suspension. In its view, suspending Claimants without a prior investigation violated Rule 26(a) of the Agreement. Rule 26(a) states:

"Rule 26--DISCIPLINE

Hearing (a): An employee who has been in the service sixty (60) days or more or whose application has been approved, will not be disciplined or dismissed without an investigation. He may, however, be held out of service pending such investigation. He shall be apprised, in writing, of the charges preferred against him and be present at such investigation and may be represented by his duly authorized representative of the Organization party to this agreement. The investigation shall be held within ten (10) days after charges are preferred. At such investigation, he shall have the right to call witnesses to testify in his behalf.

"Decision will be rendered within thirty (30) days after the completion of the investigation except where an employe is held out of service, in which case decision will be rendered within twenty (20) days. Any appeal from such decision will be handled under the provision of Rule 27."

It is undisputed that Claimants had been previously warned by their foreman that if they did not report for work on time they would not be permitted to work a position that day. In order to resolve a problem of tardiness and absenteeism, the foreman had placed the employees in the gang on notice of this policy.

Claimants were fully aware of the fact that they were required to be on the site and ready to begin work at 8:00 A.M. They understood the potential consequences of reporting after 8:00 A.M. unless an adequate explanation was provided. Yet, Claimants were tardy on January 25th. They were the only two members of the gang who were tardy; there were seventeen employees assigned to Extra Gang No. 1 that day. When they were late, Martin, after rejecting their explanation, acted as he had indicated he would. His decision was neither a surprise to Claimants, nor unreasonable considering the prior notification.

Moreover, given all the surrounding circumstances, we are convinced that Carrier's action cannot be viewed as disciplinary in nature. See Awards Fourth Division 2598, Second Division 7834, and PLB No. 1525, Award #3. Carrier's refusal to permit Claimants to work is not tantamount to discipline. As such, Rule 26 is wholly inapplicable. Since this is the only rule that is alleged to have been violated, we will dismiss the claim in its entirety.

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;

Award Number 22904
Docket Number MW-22859

Page 3

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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June 1980.