

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23127
Docket Number SG-22986

James F. Searce, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Coast Line Railroad Company:

(a) Carrier has not shown through substantial evidence that E. G. Sullivan, M. M. Thomas, R. B. Thomas, J. L. Henry, D. L. Ennis, R. A. Thompson, D. M. Hutchinson, and J. W. Childers, are guilty of violating Rule 709.

(b) Carrier should now be required to rescind infraction of suspension of the above employees. In the event Carrier does not rescind its suspension action, then this letter shall serve as notice of Claim in behalf of above employees for reimbursement of all benefits and loss of time which would normally been received by the employees had they been allowed to perform service during the period of suspension.

(c) Carrier should also remove from the personal files any record of this investigation or charges. Carrier shall remit to the General Chairman a letter to this effect."

OPINION OF BOARD: On April 20, 1978, immediately prior to their regular start time, eight (8) members of a "floating signal construction gang" confronted their foreman with the news that they were unable to go to work due to illness. While the foreman was seeking advice from his superior, the Claimants prepared and gave him notes which (essentially) stated they were sick and unable to report for duty. The gang, which had been housed in a motel at Tallahassee, Florida, some distance from their homes which were at various locations in the State, left that location and, instead of going directly to their homes or to see physicians, first went as a group to Jacksonville, Florida and called upon the Chief Engineer for Signals and Communications. At that time, they aired various complaints relative to their foreman. (According to the Carrier, on April 20, 1978 just prior to commencing the shift the foreman had upbraided the Claimants for the manner

in which they had cluttered up their motel room -- assertedly a violation of a lodging Agreement with the motel -- and the Claimants were incensed over his orders to clean up the mess.) Most or all of the Claimants secured doctor's notes on April 21, 1978 attesting to their asserted illnesses.

On the basis of a hearing, the Claimants were each assessed two (2) weeks suspension from service on a charge of violation of Rule 709 -- absenting oneself from duty. The Organization asserts that such action was in error due to lack of proper notice of the hearing, a pre-judgment of guilt by the Carrier, and a lack of showing of meeting the burden of proof.

On review of the considerable record in this case, this Board finds no basis to affirm the Organization's assertion of improper notice: while the actual notice may not have been "in-hand" within the obligatory 48-hours, all of the Claimants were shown the document and as evidenced by their presence, all were sufficiently apprised of this event. As to the other two defenses raised by the Organization, notwithstanding its contention to the contrary, the Claimants' actions immediately post their asserted incapacities is not only relevant but decisive. When taken in the context of the events earlier that day, i.e. the foreman's admonishment concerning their housekeeping practices, the journey of the group to see the Chief Engineer, en masse raises an overwhelming doubt as to the validity of their claims of being too sick to work. If the Claimants had legitimate complaints as to their treatment at the hands of the foreman, they had available to them the machinery to properly air such dissatisfaction -- the grievance procedure. Their collective decision to take matters into their own hands fatally undermined any reasonable possibility that they might have all suffered an inability to work on April 20, 1978. Under the circumstances, this Board shall not attempt to substitute its judgment for that of the Carrier. We find no violation of the Agreement.

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;

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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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauler
Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1981.