

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23184  
Docket Number CL-23119

George S. Roukis, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(  
(Illinois Central Gulf Railroad

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood (GL-8870)  
that:

(a) Carrier violated the Agreement when it wrongfully suspended A. J. Wesley and L. W. Logan following an investigation held at Centralia, Illinois, April 5, 1977.

(b) Carrier now be required to compensate claimants Wesley and Logan five days pay each, and their records cleared of all charges as a result of being held out of service following a formal investigation on April 5, 1977.

OPINION OF BOARD:

Claimants A. J. Wesley and L. W. Logan were assessed a five day suspension following an investigative hearing held on April 5, 1977. The purpose of the investigation was to determine whether A. J. Wesley was absent from his assignment, failed to perform his duties and arranged for L. W. Logan to punch out his time on March 30, 1977. This disposition was appealed pursuant to Agreement provision.

In defense of his position, Claimant Wesley contends that he was ill and located in the North Wheel Room during his absence between 9:30 P.M. and 11:55 P.M., although he acknowledged his failure to punch out properly. He denied ever leaving the property. Claimant Logan attributes punching out the wrong card to human error.

In our review of this case, we concur with Carrier's determination. It may well be that Claimant Wesley was unable to perform his assignment, but he made no effort to notify his supervisor that he was ill. The record shows that Special Agent Slover and Production Manager Gallatin could not locate him despite a diligent and methodical search and that he failed to comply with the appropriate notification procedures. He was certainly under an obligation to apprise supervision of his purported condition, rather than to disappear literally from the work situs. It is not enough to assert that he was in the North Wheel Room, a "Birdcage" as this specific location is customarily known. A compelling presumption arises that he left the property. Moreover, he compounded his predicament when he permitted de facto another employee to punch out his time. By itself, this is a serious infraction.

Correlatively, we do not find any substantive basis to Claimant Logan's defensive assertions. The eyewitness testimony of the Production Foreman dispels any notion of inadvertence. To the contrary, it establishes a purposeful design. Careful analysis of the testimonial record does not indicate that Claimant Logan was momentarily confused when he punched out at about 11:50 P.M., but instead shows that he simultaneously and deliberately punched out both cards. His rebuttal testimony does not overcome this persuasive finding. In Third Division Award 12954 we upheld a thirty (30) day suspension when a Machine Operator left his assigned duties without permission and falsified his time card. In the instant case, we have a conceptually analogous situation involving two employees. Their sum total deportment was impermissible and violative of Carrier's rules. We will deny 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 Employee involved in this dispute are respectively Carrier and Employee 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. Paulson*  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1981.