

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23220
Docket Number CL-23320

George E. Larney, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
 { Freight Handlers, Express and Station Employees
 { The Monongahela Railway Company

STATEMENT OF CLAIM: Claim of the Committee of the Brotherhood (GL-8980) that:

(a) The Carrier violated the Rules Agreement effective April 1, 1951, particularly Rule 20, when it assessed discipline of ninety (90) days' suspension on Clerk T. L. Burns, March 1, 1979.

(b) Claimant's record be cleared of the charges brought against him on January 31, 1979.

(c) Claimant be compensated for wage loss sustained in accordance with the provisions of Rule 20.

OPINION OF BOARD: Claimant T. L. Burns, employed as a janitor at Carrier's Offices in the Union Station Building located at Brownsville, Pennsylvania, was withheld from service midway through his tour of duty on January 29, 1979 for absenting himself from duty without permission following his assigned lunch period and for not attempting to notify anyone in authority of his absence. Claimant was formally charged by letter dated January 31, 1979, with violating General Rule B-1, paragraphs 2 and 7, General Rule E and General Rule T of the Monongahela Railway Operating Rules effective April 30, 1978. An investigative hearing originally scheduled for February 7, 1979, was subsequently postponed until February 20, 1979 at the request of the Organization. By letter dated March 1, 1979, Claimant was informed by Carrier that he had been adjudged guilty as charged resulting in the imposition of a ninety (90) day actual disciplinary suspension.

We note the basic facts in the instant case are not in dispute. Claimant was, according to his own testimony, away from his assigned position for well over a two (2) hour period following his lunch break which began at 8:00 PM and ended at 8:30 PM on date of January 29, 1979. According to the Claimant, the reason for his absence was due to mechanical problems he encountered with his automobile outside a restaurant following his lunch break. Specifically, Claimant testified he was ten (10) to fifteen (15) minutes late in leaving Carrier's premises to get lunch. He drove to a steakhouse located some five (5) to ten (10) minutes away from the Union

Station Building and there spent about twenty (20) minutes in the restaurant eating. Upon leaving, Claimant, according to his testimony, encountered difficulty in starting his automobile and from then until he returned back to work at about 10:30 - 10:45 PM, he was attempting to repair his car.

Notwithstanding Claimant's reason for his absence, which if true is worthy of sympathy from anyone who has ever been victimized by car troubles, nonetheless, the fact is that he was absent from duty without proper authority and more disturbingly, he made no effort to notify anyone in authority he would be delayed in his return to work. It appears to us however, that whatever the reason for Claimant's absence on the date in question, it was not seemingly the result of a premeditated decision on his part. Furthermore, we find Claimant's heretofore unblemished work record, insofar as prior disciplinary actions in his previous four (4) years of service with the Carrier, as having a mitigating effect on the quantum of discipline imposed here for the subject offense. We believe very strongly in the precepts that the severity of discipline must be reasonably related to the gravity of the offense and that the imposed quantum of discipline should serve to correct and rehabilitate rather than to punish. It is our determination in the instant case that the quantum of discipline imposed on the Claimant was too severe for his proven offense and thereby punitive in nature. Thus, we find discipline in the amount of forty-five (45) days actual suspension to be more reasonably related to the gravity of the subject offense.

The Board directs the Carrier to reduce the ninety (90) day actual suspension to a forty-five (45) day actual suspension. Claimant shall thus be compensated in accordance with Rule 20(e) of the Controlling Agreement effective April 1, 1951, for his net wage loss incurred as a result of having served an additional forty-five (45) days of suspension.

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:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March 1981.