

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23235
Docket Number MW-23211

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
(Terminal Railroad Association of St. Louis

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

(1) The suspension of three (3) days imposed upon Machine Operator Wm. J. Clemons for alleged 'failure to protect your assignment without proper authority from August 14, 1978 to August 25, 1978, inclusive' was without just and sufficient cause and on the basis of unproven and disproven charges (System File TERRA 1978-36).

(2) Machine Operator Wm. J. Clemons shall be compensated for all wage loss suffered."

OPINION OF BOARD: A hearing was conducted to determine the facts and responsibility concerning the Claimant's asserted failure to protect his assignment from August 14, 1978 to August 25, 1978.

Subsequent to the investigation, the Carrier found responsibility and assessed a 3 day suspension.

According to the Claimant, a fellow employe gave him a ride on August 14, 1978, and when it became apparent that the Claimant was ill, he took the Claimant to the bus stop and agreed to advise the Foreman of the Claimant's physical inability.

The Claimant stated that he visited the doctor the next day, and he then entered the hospital. The Claimant remained in the hospital until August 21, 1978, when he was released to resume work on August 22.

The Carrier claims that it did not receive any notification concerning Claimant's whereabouts until it received a telephone call from the Claimant's wife on August 18, 1978, and that the Claimant did not return to duty on August 22; but rather, he reported on August 25, and at that time he advised Carrier that he would return on August 28.

Even were we to give the Claimant the benefit of all doubts the fact remains that he was obligated to take some specific action as of August 22, 1978. His failure to do so compels us to find that there was a basis for the disciplinary action, and certainly under the circumstances, the quantum of the punishment cannot be considered to be excessive.

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 16th day of March 1981.