

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23334  
Docket Number MW-23217

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 five (5) days imposed upon Motor Truck Operator Charles Bailey for alleged 'failure to protect your assignment without proper authority between 12:30 P.M. and 1:00 P.M., Friday, September 8, 1978' was without just and sufficient cause and wholly disproportionate to such a charge (System File TRRA 1978-37).

(2) Motor Truck Operator Charles Bailey shall be compensated for all wage loss suffered."

OPINION OF BOARD: The Claimant was withheld from service on September 8, 1978, pending the outcome of the hearing on the charge that he failed to protect his assignment without proper authority for one-half hour on that day.

Subsequent to the hearing, the Carrier advised that he was guilty of the infraction and he was assessed a 5 day suspension.

At the hearing, the Claimant admitted that he was away from his assignment between 12:30 and 1:00 p.m. on the day in question without specific permission, but he testified that the Foreman knew where he was. He testified that he left with "the truck" to get a "couple of sodas" for himself and another individual, but the truck did not stop at the south end. He then recounted certain difficulties concerning getting to his vehicle so as to get back to work; which arrangement was stifled by "Mr. Stogner" who told him to park his car and ride back in the truck.

The Carrier concedes that the Foreman granted the Employee permission to leave the work site to get a soda at 11:56 a.m., but it insists that the Employee's unauthorized absence was not due to any legitimate reason, and that accordingly the discipline assessed was neither arbitrary, capricious, nor an unreasonable abuse of discretion.

It appears from a review of the record in this case that the Claimant was away from his work area without permission, but that he was not totally the master of his own fate, and that he did attempt to get back to the work area as soon as possible. At the same time, we feel that the record does support the conclusion that the Employee was, to some extent, remiss in his actions on the day in question.

While we are mindful of the hesitancy exhibited by most Neutrals to substitute their own judgment for that of the Carrier, under the entire record here we feel that a one day suspension would have been more than adequate, and we will only uphold so much of the suspension as calls for one day.

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:

R. W. Bunker  
Executive Secretary

Dated at Chicago, Illinois, this 19th day of June 1981.

