

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23439  
Docket Number SG-23420

Martin F. Scheinman, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railroad Signalmen  
{ Port Authority Trans-Hudson Corporation

STATEMENT OF CLAIM:

"Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Port Authority Trans-Hudson Corporation:

The decision rendered by Mr. K. W. Black on March 9, 1979, concerning the discipline of Signal Repairman 1, Mr. Charles Surrusco, for allegedly violating Rules 7 and 26 of the PATH Book of Rules be rescinded."

OPINION OF BOARD: After investigation, Claimant Charles Surrusco, Signal Repairman 1, was assessed a six (6) week suspension account of an alleged violation of Rules 7 and 26 of the Agreement. Claimant reported off duty on January 29, 1979 and the reason for his departure from work was stated to be "flu". Subsequently, Claimant missed work from January 30 through February 2, 1979 inclusive, and filed and received sick pay for this period.

Carrier charged that Claimant was observed on January 31 and February 1, 1979, behaving in a manner inconsistent with his illness. Specifically, Claimant was observed operating a motor vehicle, going shopping and going to the movies. Therefore, it found Claimant to be in violation of Rules 7 and 26.

Rules 7 and 26 state:

"Rule 7. To enter or remain in the service, employees must be of good character and must not commit an insubordinate, dishonest, immoral, illegal or vicious act. They must conduct themselves at all times, whether on or off PATH property, in such a manner as not to bring discredit upon PATH."

"Rule 26. Employees must maintain a satisfactory attendance record. If disabled due to accident or illness, or if unavoidably delayed, they must report by telephone to the person designated in their Division that they will be late or unable to cover their assignment and the reason therefore. This must be done in time to permit PATH to fill their position if necessary. Unexplained absence, excessive absenteeism, lateness or making a false report of injury or illness will be cause for disciplinary action. Employees returning from periods of absence must advise their supervisor sufficiently in advance to prevent their vacancy from being filled by another employee."

The Organization, on the other hand, contends that Carrier violated Article X-A of the Agreement when it rendered its disciplinary decision by letter on March 9, 1979. Article X-A states, in pertinent part, "The said hearing officer shall render his decision."

The Organization contends that under the terms of Article X-A Hearing Officer Daniel J. Reynolds was obligated to render the decision and assess the penalty. Since K. W. Black, acting for E. F. Nicholson, Acting Superintendent of Power, Signals and Communication, rendered the decision and assessed the discipline, the Employees assert Article X-A was violated. In the Employees' view, Carrier's failure to properly apply Article X-A warrants setting aside the discipline imposed.

After careful review of all the evidence presented, this Board finds that the evidence conclusively establishes that Claimant had indeed engaged in activities contradictory to his illness while was receiving paid sick leave. The record indicates that Claimant understood this. As such, he is subject to appropriate disciplinary action.

As to the appropriate penalty, we are convinced that the six (6) week suspension imposed is excessive. Given all of the circumstances, the six (6) week suspension issued to Claimant should be reduced to three (3) weeks and we do so find.

Finally, the Organization's procedural argument that Article X-A was not properly applied, in that the hearing officer did not issue the disciplinary notice, must be rejected. This practice was established in several prior disciplinary proceedings. The Organization raised no objection to the practice during those proceedings. It is inconsistent to do so now.

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 Agreement was violated.

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Claim sustained to the extent and in the manner set forth in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

*A. W. Paulsen*

Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November 1981.