

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23464  
Docket Number MW-23154

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees  
{ Kansas City Southern Railway Company

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

(1) The suspension of five (5) days imposed upon Trackman Mark Pratt was without just and sufficient cause (Carrier's File 013.31-195).

(2) Trackman Mark Pratt shall now be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, Trackman Mark Pratt, after investigation, was suspended for five days for absence without permission on March 23 and May 1, 1978. The Organization contends that Carrier lacked just and sufficient cause to suspend Claimant.

Carrier, on the other hand, asserts that Claimant was suspended for being absent from work without permission, in violation of Rule Q. It insists that the suspension issued was justified.

Rule Q states:

"Employees must report at the appointed time, devote themselves exclusively to their duties, must not absent themselves, nor exchange duties with or substitute others in their place without proper authority."

Claimant argues that his absence on March 23, 1978 was due to the fact that his carpool did not arrive to take him to work. Claimant testified that he did not contact his Foreman, Mr. Woodard, to notify him of Claimant's absence, since the Foreman would have been "already half way to his job" by the time the carpool mixup was apparent.

We find Claimant's absence on March 23rd to be a clear violation of Rule Q. The record shows no attempt by Claimant to comply with Rule Q by contacting a "proper authority" to get permission to be absent from work. It was not enough for Claimant to surmise that Mr. Woodard would be unreachable by telephone. Claimant should have tried to reach Mr. Woodard or another person in "authority". The Agreement requires such an effort by an employee. X-1

We also decline to excuse Claimant's absence on the basis of the carpool. All employees are expected to present themselves for work at the time and place assigned. Lateness or absence are not condoned merely because other

employees may be partially at fault. When it became clear that the carpool would not arrive in time for Claimant to get to work, Claimant should have sought other means of transportation and contacted his superiors to inform them of any expected delays.

Claimant asserts that he was late for work on May 1, 1978 rather than absent from work as indicated in Warning Letter No. 2 (Carrier's Exhibit No. 2). The parties have presented no evidence to indicate that lateness or absence are treated differently under Rule Q, nor would a reading of Rule Q so indicate. Accordingly, despite the fact that Claimant did eventually present himself for work on May 1, 1978, the Carrier was within its rights to issue a warning letter for the May 1st violation of Rule Q.

X-2  
Thus, Claimant is guilty as charged. The final question is the appropriate discipline.

X-3  
Lateness and absenteeism are serious problems. To be sure, any Carrier is fully within its rights to take corrective action, disciplinary or otherwise, to insure that employees keep a proper work schedule.

X-4  
However, we are persuaded that the imposition of a 5-day suspension here is unreasonable and excessive. Underlying our conclusion is the testimony of Woodard, which was unrefuted, that an investigation does not normally take place until the third Rule Q letter.

Here, there was but two letters issued. For this reason, we are persuaded that a two-day suspension is appropriate and we do so find.

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 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.

A W A R D

Claim sustained in accordance with the Opinion.

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By Order of Third Division

Attest: *A. W. Paulson*  
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1981.