

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25079
Docket Number CL-25107

Edward L. Suntrup, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9766)
that:

1) Carrier violated the Clerks' Rules Agreement at Bensenville, Illinois when it charged, held investigation and assessed discipline of a thirty (30) day actual suspension to Employee C. D. Hicks on February 4, 1982.

2) Carrier shall now be required to compensate Employee C. D. Hicks for all lost time caused by his suspension on February 4, 1982, and clear his personal record of all charges, investigation and subsequent discipline of thirty (30) days suspension.

OPINION OF BOARD: On January 19, 1982 the Claimant received a notice to attend an investigation to determine his responsibility, if any, in connection with his alleged failure to protect Position 00250 at 7:01 am on January 16, 1982 at the Bensenville, Illinois Caller's Office. After the hearing was held on January 28, 1982 the Claimant received a letter dated February 4, 1982 by which he was informed that he had been found guilty as charged. The Claimant was assessed a thirty (30) day actual suspension effective on this latter date. After the claim was appealed on the property up to and including the highest Carrier officer designated to hear such it is now before the National Railroad Adjustment Board.

A review of the record shows that the Claimant laid off on January 16, 1982 because he had the "impression" that he had been given authority to do so by the Division Operations Officer. Nothing in the record, however, including the Claimant's own testimony, establishes that this Officer had, in fact, given the Claimant permission to lay off on the day in question. What did transpire was an oral conversation in the Caller's Office on this property between the Claimant and the Operations Office on January 15, 1982 in which the Claimant raised the issue of the possibility of leaving early on January 16, 1982 or of having that day off. At that point the Officer stated that the Claimant should get back to him and that he would think about this request. Nowhere in the record is it established that the Operations Officer granted any permissions whatsoever with respect to January 16, 1982. Nor is it established that this Officer ever contacted the Claimant, nor that the Claimant ever contacted the Officer, later with respect to these issues. What is established is that the Claimant simply presumed that he had permission to take the day off because of the conversation on January 15, 1982. There is no evidence that this presumption was based in fact. There is sufficient substantial evidence, therefore, to warrant conclusion that the Claimant is guilty as charged, and on merits the claim must be denied.

Award Number 25079
Docket Number CL-25107



The only issue to be resolved is whether the penalty imposed by the Carrier was reasonable. When assessing discipline, a Carrier may weigh a Claimant's past work history (Second Division Award 8527; Third Division Awards 22320, 23508). The record on property shows that the Claimant had received, in the five (5) years prior to this incident, seven (7) letters of reprimand, two (2) thirty (30) day deferred suspensions, and that he had been assessed with one entry of facts. The application of the principle of progressive discipline suggests that the Carrier was neither arbitrary nor capricious in its actions in the instant case and its determination in this matter will not be disturbed.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 4th day of October 1984.