

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26159

Docket Number MW-26191

Philip Harris, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Northeast Illinois Regional Commuter Railroad
(Corporation (former Chicago, Rock Island &
(Pacific Railroad Company)

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

1. The dismissal of Track Laborer M. J. Cogburn for alleged violation of Rule 'Q', was without just and sufficient cause and on the basis of unproven charges (System File NIRCRC-D-1108/08-13-39R).

2. The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: On June 1, 1983, Claimant came to his job site with his right hand in a cast. He had just left the hospital where his off-duty injury of a broken bone was treated. Claimant told his Foreman he could not work that day or in the immediate future. The Foreman in turn advised the Claimant to fill out the necessary forms for a leave of absence and attach his doctor's supporting documentation. For the next three weeks the Carrier unsuccessfully tried to reach Claimant by phone to ascertain his status and to again ask that the forms be completed. Finally on June 27 1983, there was telephone communication. He returned to work on August 1 with a doctor's note but still no forms. On August 8, 1983, he was notified that an Investigation was set for ten days hence, after which he was dismissed. The forms were turned in on August 10, 1983.

The Organization says that Claimant felt he met the requirements by showing up on the property with his hand in a cast. He also produced an emergency room admitting slip, and therefore believed he was in compliance with Rule "Q".

The Board believes that the Carrier was reasonable in requiring that orderly procedures be followed, including those relating to a leave of absence. The employee was made aware of the Rule on more than one occasion, yet he failed to comply on a timely basis. The Carrier cannot be expected to allow each employee to decide how and when to respond to Rules - - this would create chaos. Also, the Carrier was unable to reach the Claimant during the absence despite numerous attempts. Offsetting this is the unquestioned disability that occurred. Hence the Board agrees that the dismissal was excessive and that Claimant should be returned to service with seniority and all other rights unimpaired but without backpay.

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:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1986.