

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26348
Docket Number MW-26059

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Chesapeake and Ohio Railway Company

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

(1) The ten (10) days of suspension imposed upon Trackman J. R. Robinson for alleged absence without proper authority on July 28 and 29, 1983 was arbitrary, capricious, without just and sufficient cause and on the basis of unproven charges (System File C-TC-1885/MG-4195).

(2) The Appendix 'C' letter dated July 29, 1983 shall be removed from the claimant's personal record and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: In August, 1983, Claimant was assessed ten days' actual suspension for alleged absence from service without permission in July, 1983. The Organization timely appealed Carrier's decision. Carrier rejected the appeal. Thereafter, it was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization contends that the imposition of ten days' actual suspension is excessive and unwarranted. It acknowledges Claimant's absence on the days in question. However, the Organization insists, Claimant did obtain permission from the Assistant Foreman to be off on those days. Thus, it argues that Claimant did comply with relevant procedures when he was out ill in July, 1983.

In addition, the Organization asserts that Carrier has misinterpreted the provisions of the July, 1977 Memorandum of Agreement relating to absence. In its view, Carrier may not count Claimant's absences on July 26 and 27, 1983, and July 28 and 29, 1983, as two separate absences for the purpose of imposing the ten days' suspension. Thus and for these reasons, the Organization asks that the Claim be sustained.

Carrier, on the other hand, submits that it acted properly under the facts of this case. First, it denies that Claimant contacted appropriate Carrier personnel to apprise it of his absence. Second, it argues that it had the right to consider July 28 and 29 as a separate absence from July 26 and 27. Therefore, it asks that the Claim be rejected.

A review of the record convinces us that the Claim must fail. This is so for a number of reasons. First, the record evidence reveals that appropriate Carrier personnel were not informed of Claimant's absence. At best, an Assistant Foreman, who happened to be Claimant's brother, was so informed. Clearly, Claimant knew that he must inform Supervisor Sheaffer and not an Assistant Foreman that he would be out. Therefore, we are convinced, Claimant did not properly notify Carrier of his absence.

Second, Carrier could consider July 28 and 29 as an absence distinct from July 26 and 27. Claimant knew he should have informed Carrier during the first two days of his absence as to the reasons therefor. He did not. As such, his failure to do so during his absence on July 28 and 29 is simply another failure to comply with the absence provisions of the July, 1977 Memorandum. Any other ruling would permit an employe to absent himself for many days or weeks at a time and still have his absence counted as a single instance pursuant to the 1977 Memorandum. Surely, the parties did not intend such a result.

In sum, Carrier was not properly notified concerning Claimant's absence. In addition, Carrier correctly considered Claimant's absence on July 28 and 29, 1983, as a separate instance in assessing a penalty pursuant to the attendance provisions of the July, 1977 Memorandum. Accordingly, and for these reasons, the Claim must fail.

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

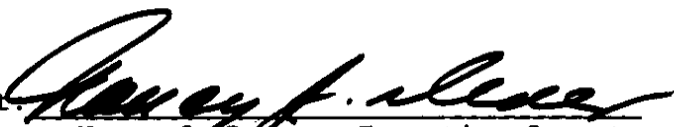
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest.


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 8th day of June 1987.