

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26683
Docket Number MW-26465

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation

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

(1) The Carrier violated the Agreement when it disciplined (placed a written reprimand on their records) Messrs. L. G. Cain, S. D. Shanor, S. M. Sienicki, D. R. Auens and E. J. Fisher without agreement in writing between them, their union representative and the Carrier's authorized official and/or without benefit of a hearing as stipulated in Section 2(a) of Agreement Rule 27 (System Dockets CR-769D, 770D, 771D, 772D and 773D).

(2) The discipline (written reprimand) imposed upon Messrs. Cain, Shanor, Sienicki, Auens and Fisher for alleged failure to report for duty on Friday, February 10, 1984 and alleged failure to request permission for such absence was unreasonable and unwarranted.

(3) As a consequence of either or both (1) and/or (2), above, the written reprimand mentioned in Part (1) hereof shall be removed from the claimants' records."

OPINION OF BOARD: On February 10, 1984, when Claimants reported to work they were confronted by a picket line where furloughed Carmen were demonstrating. Because of the picket line a substantial number of employees did not report to work on time and a number of other employees, including Claimants herein, did not report at all that day. Claimants did not contact Carrier and request or receive permission to be off that day. On March 1, 1984, Claimants received a written reprimand for failure to report for work on February 10th.

The Organization takes the position that Carrier has violated Rule 27 Sections 1 and 2 by its actions in issuing the letters of reprimand without a Hearing. Carrier insists that its actions were appropriate and were supported by the language of Rule 27 1 (a).

This issue has been before the Board on two previous occasions, addressed by Third Division Awards 26382 and 26383, under virtually identical pertinent circumstances. This Board held in Award 26382:

"This Board rejects the Rule construction advanced by the Carrier which would allow the Carrier to issue written reprimands into the employee's discipline file without the right of a Hearing. Reprimands are clearly included in Section 1, 'Hearings'. This Board does not

question, abridge or deny the right of the Carrier to discipline employees who violate important Rules. However, employees, under Rule 27, have the right to a Hearing to adduce the proper facts and reduce any errors before an unfavorable mark becomes a part of their permanent disciplinary record. This Board sustains the Claim."

Based on the principle of stare decisis this Claim also must be sustained.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 23rd day of November 1987.