

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26716

Docket Number MW-26989

Elmer F. Thias, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Soo Line Railroad Company (former Chicago, Milwaukee, St.
(Paul and Pacific Railroad Company)

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

1. The sixty (60) calendar days of suspension imposed upon Laborer D. H. Vernon for alleged failure 'to comply with your Foreman's instructions and leaving your job without proper authority' was arbitrary, capricious and without just and sufficient cause (System File C #25-84/D-2667-1).

2. The claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The Claimant has been employed by the Carrier as a Section Laborer for eleven years. His record in that period of time contains no disciplinary entry. However, the Claimant was notified on August 23, 1984, that he was being suspended from service for a period of sixty calendar days because he had refused to install anchors as instructed by his Foreman and had left his position on August 14, 1984.

The Organization contests the propriety of the disciplinary suspension. It provided representation to the Claimant during the Hearing held on September 5, 1984, and has progressed the dispute to this Board on behalf of the Claimant. The Organization holds that the Claimant sustained an injury or aggravated an old injury when closing doors on a railroad car. Thereupon, the Claimant advised his Foreman that he had sustained an injury and that he was leaving at 10 A.M. on August 14, 1984, to seek medical treatment. When the Claimant returned to duty on August 15, 1984, he furnished the Foreman with a statement from his doctor. In this set of circumstances, the Organization contends that discipline is not justified.

On the other hand, the Carrier's position is that the Claimant did not inform his Foreman that he had sustained an injury while closing doors to the railroad car and did not inform the Foreman he was leaving work for the purpose of obtaining medical treatment. Finally, the Carrier points out that the Claimant did not fill out a Form 171 injury report for the day in question. Hence, it is the Carrier's position that the Claimant failed to comply with his Foreman's instructions and left his assignment without proper authority on August 14, 1984.

The testimony of the Section Foreman is dispositive to the fact that the Claimant failed to notify him of having sustained an injury while closing a door on a railroad car and failed to notify the Section Foreman that he was leaving work to obtain medical treatment. Another Section Laborer was present with the Claimant and the Section Foreman and he was instructed to put on rail anchors with the Claimant. This Section Laborer appeared as a witness at the Hearing and his testimony corroborated the testimony of the Section Foreman.

The record is also clear that the Claimant returned to the Section Foreman and asked if he would like a doctor's certificate. Subsequently, the Claimant did keep a doctor's appointment at 1:45 P.M. on August 14, 1984, and furnished a certificate from that doctor to the Section Foreman on the morning of August 15, 1984. Finally, the Section Foreman admits that he did not inform the Claimant that he was leaving without proper authority.

We find that the charges of the Claimant failing to comply with his Foreman's instructions and leaving his job without proper authority are substantiated in the record. Nevertheless, we are persuaded to believe the Claimant left work with the tacit permission of his Foreman.

Upon due consideration of the entire record, we concur that a disciplinary penalty is justified but that discipline of a sixty day suspension is excessive. This is the first occasion on which the Claimant has been disciplined in a period of eleven years of service and he was not cautioned that he was leaving work without proper authority when he did so. Consequently, we conclude that no more than a forty-five day suspension can be justified on the circumstances here. We therefore direct that the Claimant be compensated for such wage loss as he incurred over and above a forty-five day suspension.

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

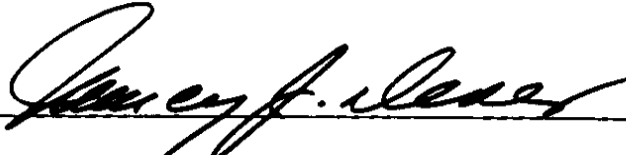
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____


Nancy J. Dever - Executive Secretary

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