

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Richmond, Fredericksburg and Potomac Railroad Company

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

(1) The five (5) days of suspension imposed upon Machine Operator T. R. Burruss for alleged 'willfully neglecting your duties on May 21, 1984' was without just and sufficient cause and on the basis of unproven charges (System File R-D-2363).

(2) Claimant T. R. Burruss shall have his personal record cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was subject to an investigative hearing under the charge of "willfully neglecting your duties on May 21, 1984." Following the hearing, the Claimant was assessed a disciplinary suspension of five days.

The record shows that the Claimant was off duty owing to a hernia condition and was provided with written release by the Carrier physician that he was able to return to work on May 21, 1984. The Claimant failed to report on May 21, 1984, but rather he reported on May 22, 1984.

According to testimony of Carrier supervisory witnesses, the Claimant had indicated that he had been seen by the "Company doctors" on May 21, 1984, as explanation of his failure to report. At the hearing, the Claimant stated

that he had visited his personal physician on May 21, 1984, who had allegedly given him a note releasing him for duty on May 22, 1984. He stated, however, that he had failed to provide such note at the time he returned on May 22, 1984. There was also no showing that the Claimant had advised the Carrier in advance that he would be absent on May 21, 1984.

The Board finds that, as a minimum, the Claimant failed to report off for May 21, 1984, the date when he and the Carrier were aware that he had been released for duty by the Carrier physician. That he may have visited his own physician on May 21, 1984, did not lessen his obligation either to report for work or seek permission to be absent.

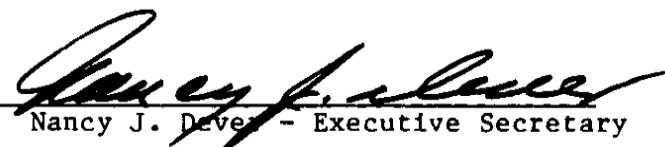
As to the degree of discipline, the Carrier properly referred to the Claimant's prior record, which shows a succession of disciplinary suspensions for being absent without permission. There is no basis to disturb the Carrier's action.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1988.