

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 28155
Docket No. MW-28210
89-3-87-3-794

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Detroit, Toledo and Ironton Railroad Company

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

(1) The two (2) days of suspension imposed upon Track Patrolman S. K. Pollock for allegedly disobeying a direct order given by G. L. McBee on May 16, 1986 was arbitrary, unwarranted, without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (Carrier's File 8365-1-212).

(2) The claim as presented by Vice Chairman Secretary-Treasurer J. C. Barber on July 21, 1986 to Chief Engineer J. M. Letro shall be allowed as presented because said claim was not disallowed by Director-Labor Relations E. M. Bouchard (appealed to him on September 5, 1986) in accordance with Rule 32-1-(a), (b) and (c).

(3) As a consequence of either or all (1) and/or (2) above, the claimant's record shall be 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.

Following an investigation held on May 19, 1986, Claimant was assessed a two-day suspension from service for allegedly disobeying an order given by the Assistant Supervisor of Track to work overtime on May 16, 1986.

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In progressing this claim to the National Railroad Adjustment Board, the Organization has raised several procedural arguments, including the allegation that Carrier failed to make a timely response to the claim from the proper officer designated, in accordance with Rule 32. This Board has considered these arguments and finds them lacking in merit.

From a review of the transcript of the investigation, however, we also find insufficient evidence to support a conclusion of guilt. Claimant apparently had a bona fide illness that prevented him from work on restoring a number of tracks to service. As a consequence, the claim must be sustained.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1989.