

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29467
Docket No. MW-29921
92-3-91-3-294

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

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 Carrier's decision to assess Extra Gang Laborer R. S. Anderson a letter of censure for allegedly refusing to work overtime on October 11, 1989 was without just and sufficient cause and on the basis of unproven charges (System File C#10-90/800-16-A-96 CMP).

(2) As a consequence of the violation referred to in Part (1) above, the letter of censure shall be removed from the Claimant's record, he shall be reimbursed \$19.80 mileage expense and compensated four (4) hours' pay for attendance at the hearing held in connection with the unproven charges.

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 the 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.

At the time of the incident at issue, the Claimant was employed as an extra gang laborer on Rail Gang R94 near New Hampton, Iowa. On Wednesday, October 11, 1989, Claimant reported for work and performed his assigned duties. At approximately 3:30 P.M., while plugging ties, Claimant asked his Foreman if he could be released since he was feeling ill. The Foreman released the Claimant at 3:30 P.M., and the remainder of the gang continued to work for approximately

another thirty minutes before returning to their cars and quitting work for the day at 4:30.

On October 12, 1989, Claimant received a letter of reprimand for "Absence from [his] assigned position on crew #73018, on 10/11/89 (leaving crew in an emergency situation)." By letter of October 20, 1989, the Organization requested a hearing on behalf of Claimant "to determine the facts surrounding the incident which resulted in the issuance of the discipline of October 12, 1989..." A hearing was held on November 10, 1989. By letter of November 17, 1989, Carrier notified the Organization that the reprimand would remain in Claimant's personnel file.

It is the position of the Carrier that Claimant's request for release from work at 3:30 P.M. in lieu of working overtime was not made in good faith. It contends that Claimant's alleged "cold" was simply a convenient excuse for avoiding overtime work and leaving his crew during an emergency situation. Thus Claimant was dishonest when he requested release from work at 3:30 P.M., and the letter of reprimand should remain in his file.

For its part, the Organization maintains that the Carrier has not demonstrated that an emergency did, in fact, exist, nor has it offered evidence to contradict the Claimant's testimony that he had had a cold for few days and was unable to work overtime on the day in question, despite having done so on previous days. Accordingly, the letter of reprimand should be removed from Claimant's file and he should be reimbursed for mileage and time lost to attend the hearing.

Carrier has not shown persuasively, on the record before the Board, that an emergency condition existed on the day in question. The Foreman's testimony that he felt there was an emergency does not meet a more traditional standard of a "sudden, unforeseeable, and uncontrollable...event that interrupts operations and brings them to an immediate halt." (Third Division Award 24440). Moreover, in his testimony, the Foreman admitted that the work on the day in question constituted "normal duties."

With respect to the legitimacy of Claimant's explanation that he was suffering from a cold and was unable to continue working, had the Foreman doubted the Claimant's claim of illness he could have refused the latter's request to be released from work, or demanded a doctor's excuse as corroboration. The Foreman elected to do neither. The Claimant's expressed reason for requesting leave to quit work at 3:30 P.M. was his continued suffering from a bad cold. Carrier has offered no evidence to suggest that Claimant's request was simply a ruse to avoid overtime work. Thus, based upon the evidence on the record before the Board, we find no support for Carrier's issuance of a letter of reprimand.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deva - Executive Secretary

Dated at Chicago, Illinois, this 7th day of December 1992.