

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29485
Docket No. MW-30187
93-3-91-3-633

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance
(of Way Employees
(CSX Transportation, Inc. (former
(Louisville and Nashville
(Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The ten (10) days of suspension imposed upon Mr. T. G. Slater for alleged absence without permission on August 22, 23 and 24, 1990 in alleged violation of Rule 500, was without just and sufficient cause and in violation of the Agreement [System File 14(21)(90)/12 (90-1046) LNR].

(2) The Claimant shall have his record cleared of the charges leveled against him and he shall be paid 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, Claimant was assessed a ten day suspension for being absent on August 22, 23, and 24, 1990. Our review of the record of that Investigation shows Claimant was scheduled to return to work from a prior suspension at 8:00 A.M. on August 22, 1990. At his reporting time, Claimant called the Assistant Roadmaster and requested permission to be absent because

of car problems. Claimant testified he was given permission but the Assistant Roadmaster denied this. Claimant, however, admitted he did not have authority to be absent on the second and third dates.

Whether or not Claimant had permission to be absent on August 22, 1990, is an issue of credibility, which this Board has generally deferred to the Hearing Officer. Absent a showing of unreasonableness, we will not modify that finding. Furthermore, we do not agree with the Organization's contention that Claimant's absence on that date was for good cause. It is entirely Claimant's responsibility to ensure that he has transportation to work. With regard to the remaining dates covered by the charge, Claimant's admission is sufficient to establish his responsibility for unauthorized absence. Under the circumstances, a ten day suspension for this offense is not unreasonable.

The Organization additionally asserts the discipline should be reversed because Carrier did not furnish a transcript of the Investigation to the General Chairman at the same time the discipline notice was issued. Rule 27(b) provides as follows:

"An employee disciplined, shall, upon making a written request to the Division Engineer, within 10 days from date of information, be given a fair and impartial hearing within 10 days thereafter. Decision will be rendered within 30 days from date investigation is completed. The employee shall have a reasonable opportunity to secure the presence of necessary witnesses and may be represented by the elected committee of the employees or fellow employees of his own choosing."

This Rule does not set a time limit for delivery of the transcript. It merely requires that discipline be rendered within 30 days from the conclusion of the Investigation. As the Investigation was concluded on October 11, 1990, the decision rendered on November 9, 1990, was timely.

The Organization, however, relies upon letters of February 5 and March 3, 1986, wherein the Carrier agreed to forward a transcript and discipline decision to the General Chairman at the time discipline is assessed. We do not read into those letters, though, any intent to negate discipline in the event Carrier fails to provide a timely transcript. We note, in this case, Carrier offered the General Chairman additional time to perfect his appeal after receiving the transcript. Under the circumstances, we cannot

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agree Claimant was denied due process as guaranteed by the Agreement.

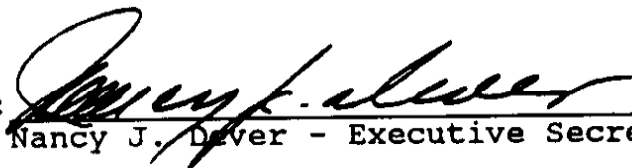
For these reasons, we find that the Agreement was not violated.

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 21st day of January 1993.