

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29988
Docket No. MW-30266
93-3-91-3-744

The Third Division consisted of the regular members and in addition Referee Robert T. Simmelkjaer when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Davenport, Rock Island and North Western
(Railway Company

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

- (1) The fifteen (15) days' actual suspension and thirty (30) days' deferred suspension imposed upon Laborer A. Lievanos, for alleged violation of Rule 604 of the General Code of Operating Rules on November 15 and 16, 1990, was without just and sufficient cause, excessive and in violation of the Agreement (System File C-91-S090-3).
- (2) The Claimant's record shall be cleared of the charges 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 employe 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 failed to report to work on November 15, 1990, at his assigned time and place. He did not receive permission from his Foreman, or any other authorized supervisor, to be absent from duty. He was also absent without permission on November 16, 1990,

although his wife furnished a co-worker with a doctor's return-to-work certificate indicating that he was able to return to work on November 16, 1990. Thus, on November 15 and 16, 1990, Claimant neither called in to report his absence nor reported to work.

Claimant's failure to comply with the provisions of Rule 604 of the General Code of Operating Rules, resulted in assessment of a disciplinary penalty of a 15 day actual suspension effective November 19, 1990, and a 30 day deferred suspension effective December 4, 1990, to December 4, 1991.

Claimant was withheld from service pending the Investigation because he was absent without permission, conduct the Carrier considers to be a serious infraction of the Rules. It is unrefuted in the on-property record that any time an employee fails to notify the proper authority of his absence, he has been held out of service pending the results of the Investigation. In this regard the Board held in First Division Award 16584:

"The agreement does not define the term 'minor offenses.' Decision of that question properly lies within the sphere of managerial judgment. If management's decision is made in good faith based on probable cause and is not arbitrary or capricious, it is not within our power to disturb it. See Award 16344. On this record, we hold that carrier's action in withholding claimants from service pending investigation was warranted."

Numerous Awards have held that provided Claimant, as here, was protected by a make whole contractual provision, including reinstatement with backpay should he later be exonerated of the charges, he was not deprived of any rights guaranteed under the Agreement (See Second Division Award 7574).

Moreover, it has been specifically held that violation of Rule 604 is a "serious infraction, and the Carrier uniformly holds employees out of service pending Investigations." In Third Division Award 29425, the Claimant's failure to report off sick under circumstances which were not so extreme as to prevent his notification of the Carrier was considered a sufficient ground for dismissal of Claimant who was working on a last chance basis.

With respect to the Organization's assertion that Claimant called in on November 15, this Board has often held that determination of the witnesses' credibility is beyond the scope of the appellate process.

A review of the entire record persuades the Board that Claimant failed to protect his employment on November 15 and 16, 1990. The Carrier has a limited work force and therefore reasonably expects employees to report absences on a timely basis so that work can be scheduled efficiently.

Finally, for Claimant's second violation of Rule 604 for failure to protect his position the penalty imposed was not disproportionate.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of December 1993.