

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43118
Docket No. MW-43499
18-3-NRAB-00003-160227**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(Kansas City Southern Railway Company d/b/a Texas
(Mexican Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [thirty (30) days suspension and thirty (30) days record suspension] imposed upon Mr. J. Herrera for alleged violation of Rule 1.13 - Reporting and Complying with Instructions following an Investigation held on February 20, 2014 was on the basis of unproven charges and in violation of the Agreement (System File KCS943PA14/K0414-4218 TMR).**
- (2) The claim referenced in Part (1) above, as presented under date of April 7, 2014 to Assistant Vice President Labor Relations D. Emery, shall be allowed as presented because said claim was not disallowed by Assistant Vice President Labor Relations D. Emery in accordance with Rule 18.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above the charges and discipline shall now be removed from Claimant J. Herrera's record with all rights and vacation unimpaired, he shall be compensated for all time lost including overtime and mileage and he shall be reimbursed for any additional expenses incurred that would have normally been covered by Carrier benefits.**

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

After Investigation held February 20, 2014 and by letter dated February 28, 2014, the Claimant – an employee in the Carrier’s service since July 2003 – was given a 60-day suspension (30 days actual, 30 days record) for failing to protect his assignment as a Laborer and failing to follow instructions regarding notification and documentation of the need for leave for February 13, 2014.

On February 13, 2014, the Claimant was assigned to a gang domiciled at Laredo, Texas and had an 0700 scheduled report time. The record shows that approximately 45 minutes before his scheduled report time, the Claimant contacted a Machine Operator who was serving as Acting Foreman and also contacted an Acting Track Supervisor and advised them that he would not be reporting for work that day. The Claimant also left a voicemail with Roadmaster D. Rowlands at 0753 advising that he was sick and not coming to work.

Roadmaster Rowlands testified that “... when I took over the position of Roadmaster for District 16 and 17, I had a conference call which everyone knows that I was completely aware of and has reiterated over and over, time and time again, that if you’re going to be sick, if you’re going to have family issues, you do not contact anyone else but me, the approving manager.” Tr. 6. Roadmaster Rowlands further testified that the Claimant only contacted a Machine Operator and a Foreman – “both Union employees, not management.” Tr. 7.

According to the Claimant, "... when I called in sick, I reported it to my immediate Foreman and my immediate supervisor ... thinking that they would carry it on and tell them that I wasn't coming to – to work." Tr. 46.

The relevant rules provide [emphasis in original]:

1.13 – Reporting and Complying with Instructions

"Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties.

* * *

30.3

A. Employee Responsibilities Regarding Notification and Documentation of the Need for Leave

Notification: Maintenance of Way and Signal Department employees may not lay off for any reason (including but not limited to leave for sickness, vacation, personal time, and safety days), without first making "proper notification" and obtaining prior permission from the "appropriate management supervisor." For purposes of this rule, "appropriate management supervisor" means an employee's immediate management supervisor or other management supervisor designated by the Company to receive leave requests. "Proper notification" means notification to the appropriate management supervisor, with as much advance notice as reasonably practicable. Leaving a message on a management supervisor's voice mail is not considered proper notification. Similarly, notifying a non-management employee (such as a working foreman) of a layoff does not satisfy this notification requirement."

* * *

Substantial evidence shows that the Claimant did not comply with the above-cited rules. Although there were differences in the record, sufficient evidence rising to the necessary substantial evidence standard shows that the Claimant was obligated to contact Roadmaster Rowlands and advise Rowlands that he was going to be absent and that contacting the other individuals was not sufficient. Indeed, the Claimant's testimony shows that he was aware of that obligation to go higher in the notification chain of command requirement than he did. The Claimant's testimony that "... when I called in sick, I reported it to my immediate Foreman and my immediate supervisor ... thinking that they would carry it on and tell them that I wasn't coming to – to work" [emphasis added] shows that the Claimant knew the notification had to go higher as does the fact that the Claimant attempted to contact Roadmaster Rowlands, which also shows that the Claimant knew that he was obligated to make that direct contact with Roadmaster Rowlands in order to give appropriate notice. But, by the plain language of Rule 30.3, "[l]eaving a message on a management supervisor's voice mail is not considered proper notification ... [and s]imilarly, notifying a non-management employee (such as a working foreman) of a layoff does not satisfy this notification requirement."

The Claimant's prior discipline record shows that he received a 30-day suspension (5 days actual, 25 days record) in 2011 and a 60-day suspension (30 days actual, 30 days record) in 2013. The 60-day suspension in this case (30 days actual, 30 days record) is consistent with progressive and corrective discipline.

The claim shall be denied.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 30th day of May 2018.