

PUBLIC LAW BOARD NO. 2960

AWARD NO. 105
CASE NO. 146

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North-Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The twenty (20) day suspension assessed Assistant Foreman J. O. Stanford for his absence on August 6, 1984, was without just and sufficient cause and excessive punishment. (Organization File 9D-4778; Carrier File 81-84-241-D).
- (2) Claimant J. O. Stanford shall be allowed the remedy prescribed in Rule 19(d).

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

On August 8, 1984, the Carrier directed the Claimant to attend an investigation on the following charge:

"To determine your responsibility in connection with your absence from duty on Monday, August 6, 1984."

Subsequent to the hearing, the Carrier assessed the discipline on appeal before the Board.

This case, as did case number 145, involves Rule 14. The Claimant's supervisor testified that the Claimant called at 7:20 a.m. -- 20 minutes after his starting time -- and indicated that he lost the office phone number, was sick and was going to the doctor. The next day at work, when the supervisor asked him what the doctor had said, the Claimant said he had changed his mind and did not go to the doctor. The Claimant contended that he called at 6:45 a.m., and that he did not go to the doctor because he did not have enough money and because some non-prescription pain relief medicine he took, relieved his migraine headache.

This case rests primarily on a conflict in the testimony of the Claimant and the supervisor's testimony. The Claimant claims he called in prior to his shift, whereas the supervisor said he did not.


As an appellate tribunal, it is not our function to resolve conflicts in evidence or assess credibility. We should not disturb the findings of the hearing officer unless there is reason to conclude his assessment of the credibility of the witness was without substantial support in the evidence.

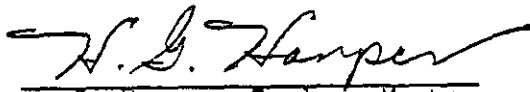
A review of the record fails to disclose any basis to disturb the Carrier's findings. It is clear enough that the Claimant failed to report at the designated time or give advance notice of his absence. As stated before, Rule 14 requires at least this much.

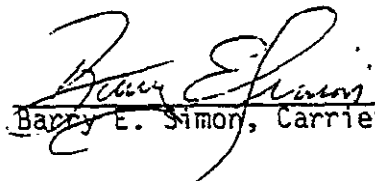
In view of the foregoing, the Claim is denied.

AWARD:

The Claim is denied.


Gil Vernon, Chairman


H. G. Harper, Employee Member


Barry E. Simon, Carrier Member

Dated: 