

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. The sixty (60) day suspension imposed upon Trackman T. D. Cook was without just and sufficient cause and excessive. (Carrier's File D-11-3-341)
2. Trackman T. D. Cook shall be compensated for all wage loss suffered and have his record cleared of these charges.

OPINION OF THE BOARD:

On December 5, 1980, the Carrier directed the Claimant to attend an investigation on the following charge:

"Your responsibility in connection with failure to follow the instructions given to you by Foreman J. D. Swore when you left your work assignment without authority at 10:00 AM on December 2, 1980 and absenting yourself from your work assignment without authority on December 3, 1980, in violation of Rules 7 and 14 of the General Regulations and Safety Rules effective June 1, 1967."

It should be noted that at the investigation the portion of the charge relating to December 3 was dropped from consideration; therefore, we are only dealing with the events on December 2, 1980.

A reading of the transcript reveals that at approximately 10:00 AM on the date in question the Claimant informed the rail gang foreman, Mr. Swore, that he wanted to go home. Mr. Swore contends the Claimant said at the time it was too cold to work. The Claimant

contends he informed the foreman he was sick. In this regard, the Claimant indicated that he had worked ten hours the night before in the rain and snow. After the Claimant informed the foreman he wanted to go home he was instructed to go to the roadmaster's office at Beverly (15 miles away) and request permission from Mr. John Wonderly to be excused. The transcript makes it abundantly clear that after receiving this instruction the Claimant left the work place but did not go to Beverly. Instead he went home. His home was between the work site and Beverly.

The Carrier argues that in light of the clear evidence that the Claimant failed to report to the roadmaster's office as instructed, the discipline should stand. They contend his conduct was a clear violation of Rule 7 which reads as follows:

"Employees are prohibited from being careless of the safety of themselves or others, disloyal, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious or conducting themselves in such a manner that the railroad will be subjected to criticism and loss of good will, or not meeting their personal obligations."

The Organization argues that the discipline is unwarranted for leaving the work site on December 2 because they had accepted that he was sick on December 3. It is undisputed that they did accept that he was sick on the 3rd as this portion of the charge was dropped. They also argue that sixty days is excessive. We also note other circumstances which could be argued to be pertinent in regard to the reasonableness of the discipline. It was mentioned during the hearing that Mr. Swore did not offer to contact Mr. Wonderly for the Claimant and could have by the radio he had at his disposal.

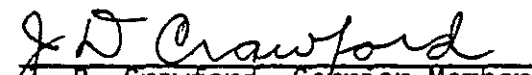
In reviewing the evidence, we find that the Claimant did absent himself from his position without permission inasmuch as he failed to secure same from the roadmaster as instructed. There is little doubt of this in the record. Further, it is well established that employees must not determine for themselves when they work and when they won't and that if there is good cause not to fulfill their employment responsibilities they must seek permission to be excused. While we feel strongly about this, we feel equally as strong that in the context of this case a sixty-day suspension is unreasonable. The purpose of discipline is corrective and it is believed that 60 days is far in excess of what might reasonably be expected as necessary to have a corrective impact. The record is void of any evidence of prior suspension that would suggest that such a strong punishment was necessary. Other factors previously mentioned also were mitigating to some degree.

AWARD

The suspension is reduced to a 30-day suspension and the Claimant shall be paid for all time lost as a result of the second 30 days of the original suspension per Rule 19. Carrier ordered to comply within 30 days.



Gil Vernon, Chairman


 J. D. Crawford, Carrier Member


 H. G. Harper, Employee Member

Date: March 25, 1982