

PUBLIC LAW BOARD NO. 2960

AWARD NO. 77
CASE NO. 70

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 fifteen (15) day suspension assessed B&B Carpenter D. L. Gates for alleged unauthorized absence on September 10, 1981 was without just and sufficient cause and without the benefit of a fair and impartial investigation. (Organization File 9D-2405; Carrier File D-11-17-397).
- (2) The Claimant shall have his record cleared of the charge and compensated for all wage loss suffered.

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 September 11, 1981, the Carrier addressed the following notice to the Claimant:

"You are hereby directed to appear for a formal investigation as indicated below:

DATE: Thursday, September 17, 1981

TIME: 10:30 A.M.

PLACE: Office of the Assistant Division Manager -
Engineering, 500 W. Madison Street, Room 411 CPT
Chicago, IL 60606

CHARGE: Your responsibility in connection with your excessive absenteeism when you again absented yourself from your assignment on Thursday, September 10, 1981 without proper authority. This is in violation of Rule 14 of the General Regulations and Safety Rules.

"You may be accompanied by one or more persons and/or representatives of your own choosing subject to the provisions of applicable rules and agreements. You may, if you so desire, produce witnesses in your own behalf without expense to the Transportation Company."

Subsequent to the investigation, the Claimant was assessed the discipline now on appeal.

The basic facts are somewhat in dispute. Mr. M. G. Arter, Manager of Maintenance Operations, testified he received a call at 7:45 a.m. (fifteen minutes after the starting time of the Claimant's shift). The Claimant indicated he would not be at work that day. He asked the Claimant why he wouldn't be at work and the Claimant did not give a reason right away. Then he did, according to Arter, indicate he wasn't feeling well. Arter then told him he would not give him permission to be absent because he had been absent a great deal during the calendar year. The Claimant then indicated he maybe could make it, but Arter did not give him permission to be late because his shift had started.

The Claimant testified he called in at 7:20 a.m. to say he was sick. When Arter started discussing the fact he had missed a lot of work, he indicated he would come in. Arter told him not to because he was going to be late and that "this was going to be unexcused...."

It is the opinion of the Board that regardless of what time Mr. Gates called, there is substantial evidence to support the charge. Whether he called at 7:20 or 7:45, it is clear that until he was informed that his absence would be unexcused he had no intention of reporting for duty on the day in question. Even after he changed his mind it was clear he could not report to duty in a timely manner. Under these circumstances, the Carrier was not obligated to allow the Claimant to report.


In addition, we note there was no challenge at the hearing to the testimony the Claimant had been absent 26 times in the first eight months of the year. The Carrier has the right to take reasonable corrective steps under such circumstances.

AWARD:

In view of the foregoing, the Claim is denied.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Dated: 1/15/86