

PUBLIC LAW BOARD No. 1844

AWARD NO. 85

CASE NO. 104

PARTIES TO DISPUTE:

Brotherhood of Maintenance
of Way Employees

and

Chicago and North Western
Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The discipline (ten day suspension) assessed B&B Carpenter D. D. Hollingsworth was without just and sufficient cause and wholly improper. Carrier's File D-11-3-334)
- (2) B&B Carpenter D. D. Hollingsworth shall be allowed the remedy prescribed in Rule 19(d).

OPINION OF BOARD:

Claimant was working on claim date as a Carpenter/Helper on a B&B crew on the Iowa Division, under the direct supervision of Foreman Thiesse. The record shows that in early May 1980 Claimant had been given a written reprimand for failure to contact the B&B Department at Boone, Iowa prior to his absence from work on May 7, 1980. Subsequently he received a thirty-day deferred suspension following a hearing and investigation into absence without authority on May 22, 1980. The subject of the present claim is a ten-day actual suspension imposed July 29, 1980 which activated the previously deferred suspension from May 1980, for a total of 40 days actual suspension, following a hearing and investigation into the following charge:

"your responsibility in connection with absenting yourself from your work assignment without authority on July 15, 1980 in violation of Rule 14 of the General Regulations and Safety Rules effective June 1, 1967."

The transcript shows that Claimant had been instructed to contact either the B&B office at Boone or his supervisor, Foreman Thiesse to report anticipated absence from work. Claimant had been provided with the telephone number of the B&B office but not the phone number of Foreman Thiesse or B&B Supervisor Knuth. According to the record, Claimant learned at 2:00 A.M. on July 15, 1980 that his presence would be required in Iowa City for personal legal business that day. His testimony is uncontradicted that he commenced calling the B&B office to report the situation at 6:40 A.M. and continued to call until he finally got through at 8:20 A.M. This testimony is corroborated by a sworn statement from a disinterested witness and testimony from another employe who verified that he also called the B&B office continuously from 7:00 A.M. until 8:20 A.M. before receiving an answer. Claimant had been told he should call either the B&B office or the Foreman, and he had not been made aware of the latter's telephone number (emphasis added). In these circumstances we find that he made reasonable efforts to comply with the instructions and cannot reasonably be held responsible for the failure of the B&B office at Boone to answer his telephone calls until 8:20 A.M. The record shows that since this incident Claimant has been given firm instructions to notify supervision directly "no matter what time of the night it is". Had such explicit instructions and relevant telephone numbers been provided him prior to July 15, 1980 this would be a different case. However, on the facts developed at the hearing and investigation we must

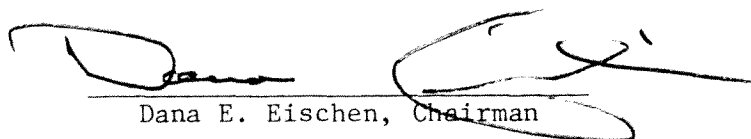
conclude that Carrier demonstrated no reasonable basis to discipline him for his actions on July 15, 1980.

AWARD

Claim sustained. Carrier shall implement this Award within thirty (30) days of issuance.


Employee Member


Carrier Member


Dana E. Eischen, Chairman

Date: Sept. 10, 1982