

PUBLIC LAW BOARD NO. 2960

AWARD NO. 110

CASE NO. 145

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 ten (10) day suspension assessed Assistant Foreman J. O. Stanford for his alleged absence from duty July 12, 1984 was without just and sufficient cause and in violation of the Agreement. (Organization File 9D-4714; Carrier File 81-84-235-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.

At the outset, the Organization makes a procedural argument. They argue that Rule 19(A) was violated since the hearing was unilaterally postponed. It is clear enough from the language of the rule, and from interpretations of the relevant portion of Rule

19(A), that the Carrier cannot unilaterally postpone a hearing. The rule requires either party desiring a postponement to "request" it. The assessment of the contention that there was no "request", requires a detailed review of the facts.

The Carrier originally, in a letter dated July 13, 1984, set the hearing for July 20, 1984. The officer who originally set the hearing indicated that subsequent to the original letter of July 13, he became aware that one of the key witnesses was going to be on vacation. He then directed a clerk to contact the Union representative regarding a postponement; possibly to sometime during the week of July 30. Instead, the clerk -- on July 17 -- simply wrote the Union representative postponing the hearing until July 30. The next day, the Union representative, without knowing the postponement notice was in the mail, contacted the clerk, and was informed of the postponement. He took exception to this, and the next day (July 19) called the officer involved -- apparently to discuss the situation. In the course of the conversation, they agreed to a postponement until August 2.

After considering the facts as a whole, it is the opinion of the Board that under these unique circumstances, no violation of Rule 19(A) occurred. The Parties agreed to a postponement prior to the time the Union received written notice prepared by the clerk.

With respect to the merits, it is noted that discipline before the Board relates to an alleged violation of Rule 14, which states:

"Employees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties with or substitute others in their place, without proper authority."

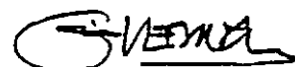
Applying the facts to Rule 14, the Board must conclude that the record contains substantial evidence that the Claimant was, in fact, in violation of the rule. The rule, based on a reasonable reading, at a minimum requires that an employe report at the designated time and place, and if they cannot, to give the Carrier as much advance notice as soon as possible.

In this case, the Claimant did not report until 7:15 a.m. -- fifteen minutes after his starting time. Moreover, there is no evidence that it was impossible for the Claimant to have notified the Carrier he was going to be tardy.

In view of the foregoing, the Claim is denied.

AWARD:

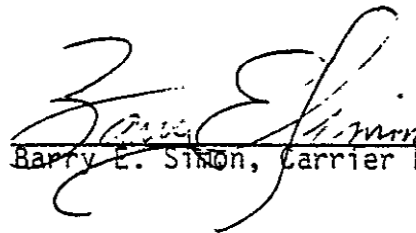
The Claim is denied.



Gil Vernon, Chairman



H. G. Harper, Employe Member



Barry E. Simon, Carrier Member

Dated: Jan 14/1986