

PUBLIC LAW BOARD NO. 2960

AWARD NO. 31

CASE NO. 31

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 deferred suspension (subsequently served) imposed upon Machine Operator T. J. Minor for alleged unauthorized absence on one (1) day was without just and sufficient cause, unwarranted and improper. (Organization's File No. 4-B-952; Carrier's File No. D-11-3-321)

(2) Machine Operator T. J. Minor shall be allowed the remedy prescribed in Rule 19(d).

OPINION OF THE BOARD:

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

On June 6, 1980, the Claimant was directed to appear for a hearing in connection with the following charge:

"Your responsibility in connection with absenting yourself from your work assignment without authority on June 6, 1980, in violation of Rule 14 of the General Regulations and Safety Rules effective June 1, 1967."

Rule 14 reads as follows:

"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."

The basic facts in this case are not on dispute. On June 6, 1980, the Claimant was assigned as a Machine Operator working under the jurisdiction of the Carroll, Iowa Roadmaster. The Claimant's assigned starting time was 7:30 a.m., but the Claimant did not report for duty at that time. At 8:20 a.m. Timekeeper Art Lillie received a call from the Claimant advising that he would not be at work.

It is the Carrier's position that the charge against the Claimant was proven and the discipline assessed was warranted. At the time of the incident, absenteeism had been a critical problem and all the employees in this territory had been advised that it would be mandatory for them to call in prior to their starting times to secure permission to be absent. A new telephone was installed specifically for this purpose and the phone number was given to all employees. The Carrier directs attention to the testimony of Timekeeper Art Lillie who indicated that no call was received from the Claimant until 8:20 a.m. and that the phone was not in use for outgoing calls and that incoming calls were received at 7 a.m., 7:15 a.m., 7:20 a.m., and 8:20 a.m. In light of Mr. Lillie's testimony, the Carrier chose not to believe the Claimant when he asserted that he attempted to call the Carrier but was unable to reach them because of a busy signal. The Claimant testified that he called in approximately 7:15, 7:30, and 7:50 a.m. but got a busy signal. The telephone log shows that the phone was not in use at these times and moreover, the Carrier directs attention to the Claimant's testimony which indicated that he was not even certain that he called the correct number.

It is the position of the Organization that the discipline assessed in this instance represents an abuse of the Carrier's discretion. They note that the Carrier does not question whether the Claimant was in fact ill on the date of charge. Nor did they challenge the Claimant's testimony to the effect that he made at least two attempts to contact the Carrier before starting time. Under the circumstances, the Organization submits that any discipline would be without just and sufficient cause and totally unwarranted. In this respect, they direct attention to the Third Division Award 23531 among others.

The Board notes that this dispute revolves around a conflict in testimony. The Claimant asserts that he called at 7:15 a.m., 7:30 a.m., and 7:50 a.m. and received a busy signal each time. In this respect, the Organization argues that the Claimant cannot be found guilty for failing to notify the Carrier of his absence as much as he made an attempt to do so and was prevented by circumstances beyond his control from making final contact. The Carrier relies upon the testimony of Timekeeper Art Lillie who indicated that the phone was free except at 7 a.m., 7:15 a.m., and 7:20 a.m. The Carrier concluded based on Mr. Lillie's testimony that the phone was free at the times the Carrier indicated he called. In this respect, they could not find the Claimant's testimony believable. The Claimant's credibility was also affected, in the Carrier's estimation, by his testimony that he was not sure that he even had the correct number. The Board notes that the Claimant testified that "evidently I had a wrong number or something."

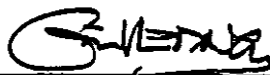
It has often been stated that it is not the function of the Board to resolve conflicts in testimony or to assess credibility. The Board's function is only to believe the evidence as a whole to determine whether the Carrier's findings are supported by substantial evidence. The Board is obligated to

uphold the Carrier's findings on credibility and conflicts and evidence that they are supported by substantial evidence. In this case, it is the conclusion of the Board that there is substantial evidence to support the Carrier's finding that it was unbelievable that the Claimant called prior to his starting time. While it cannot be denied that there was an incoming call received at 7:15 a.m. which was one of the same times the Claimant indicated that he attempted to call, there is reason to believe that the Claimant did not call as he indicated at 7:30 and 7:50 a.m. The testimony of Timekeeper Lillie was precise and unequivocal. The nature of his recordkeeping also appeared to be just as precise. Moreover, the Claimant's credibility did seem to be negatively affected by his indication that he was not sure that he had the proper number.

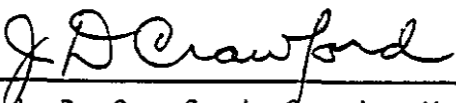
Regarding the quantum of discipline, the Board cannot conclude that a 15-day deferred suspension is arbitrary or capricious. It is important for smooth and efficient operation that the Carrier have advance warning of the Claimant's absence, even though "excused" so that arrangements can be made to minimize that employee's absence on productivity.

AWARD

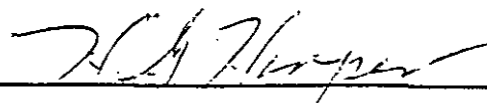
Claim denied.



Gil Vernon, Chairman



W. D. Crawford, Carrier Member



H.G. Harper, Employee Member

Date: Feb. 15, 1983