

PUBLIC LAW BOARD NO. 2960

AWARD NO. 56  
CASE NO. 52

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 K. R. Struss for allegedly "absenting yourself from work without proper authority on February 9 and 10, 1982, was without just and sufficient cause, capricious and excessive.  
(Organization's File 2D-2910; Carrier's File D-11-24-92)
- (2) Assistant Foreman K. R. Struss shall have his record cleared 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 the 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 February 12, 1982, the Carrier directed the Claimant to attend an investigation on the following charge:

"Your responsibility for absenting yourself from work without proper authority on February 9 and February 10, 1982."

The investigation was held and resulted in the discipline now on appeal before the Board.

A review of the evidence impresses the Board that substantial evidence exists to support the charge. The Claimant defended himself by contending he gave notice of his absence to the Foreman. However, we are convinced after review of the testimony, that the Claimant was aware that the proper procedure for reporting off was to notify the roadmaster or his office. It is uncontroverted that he failed to do so. Even if it was proper to notify the Foreman, it has often been held that being incarcerated--which the Claimant admitted being on the days in question--is not a justifiable basis for an absence.

The Organization argues even if guilty the discipline was excessive. The Board agrees. The Claimant had been employed for almost four years at the time of the incident with virtually a clear disciplinary record. There were no notations about absence problems either in the form of warning letters or suspension.

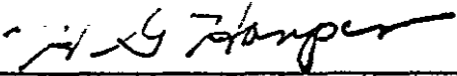
Although the Board is, and should be, very reluctant to disturb the Carrier's assessment of discipline when there is substantial evidence to support the charges, we cannot avoid concluding, in this case, a 15-day suspension under the circumstances is excessive to the extent of being arbitrary and capricious. However, some weight must be given to the reasons the Claimant was absent. In view of this and the fact that some discipline is appropriate, the Board will reduce the discipline to

a 5-day suspension which we believe, under the circumstances, is the maximum that can be considered non-arbitrary or capricious.

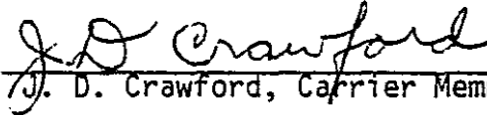
AWARD: The Award is sustained to the extent indicated in the opinion.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Dated: 5-8-81