

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1040

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
and  
SOO LINE RAILROAD COMPANY  
(CMSP&P)

Case No. 39

STATEMENT OF CLAIM:

Appeal of Claimant Richard Castel's five calendar-day suspension from the Carrier's service.

FINDINGS:

Claimant Richard Castel is employed by the Carrier as a section laborer. On October 1, 1996, the Carrier notified the Claimant that a formal investigation was to be conducted in connection with his absenting himself from duty without authority and failing to make himself available for service when he allegedly failed to protect his assignment on July 24, August 22, September 6 and 19, 1996.

After one postponement, the hearing was conducted on October 11, 1996. On October 23, 1996, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed a five calendar-day suspension effective October 24, 1996.

The Organization took exception to the discipline imposed and filed the instant claim on behalf of the Claimant.

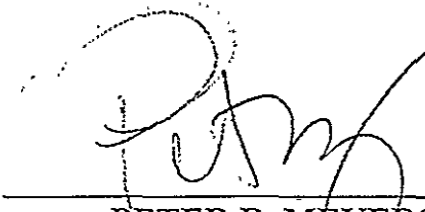
The parties being unable to resolve the issues, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of absenting himself from work without authority and failing to protect his assignment on four dates in July, August, and September of 1996. At the hearing, the Claimant admitted that he did not work on the days in question. The Claimant admitted that his medical condition does not affect his job performance, although he states that he was sick on the dates that he missed.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious. In the case at hand, the Claimant was issued a five calendar-day suspension for this rule violation. Given his relatively short tenure of employment with the Carrier, this Board cannot find that the five-day suspension issued to the Claimant was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

**AWARD**

Claim denied.



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PETER R. MEYERS  
Neutral Member

Dated: November 21, 1996