

BEFORE SPECIAL BOARD OF ADJUSTMENT 924

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CHICAGO & NORTH WESTERN TRANSPORTATION CO.

Case No. 226

Award No. 206

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The ten (10) day suspension assessed Assistant Foreman P. R. Messerschmidt for allegedly failing to protect his assignment and reporting late on September 3, 1992, was without just and sufficient cause, capricious, inappropriate and excessive (System File 4LF-2512D; Carrier's File 81-93-13).
2. Assistant Foreman P. R. Messerschmidt shall now be allowed the remedy prescribed in Rule 19(d).

FINDINGS:

On September 3, 1992, the Claimant was assigned as an assistant foreman on a section crew at Sioux City, Iowa. His tour of duty began at 7:30 a. m. On the date in question, the Claimant reported for work 30 minutes late. As a result, the Claimant was notified to attend a formal investigation on the charge that he did not protect his assignment when he reported late for work.

At the hearing, the Claimant admitted that he was late for work on September 3, 1992, because his alarm clock did not go off and he had to drop off his children with a relative before leaving for work. The Carrier found the Claimant's reasons inexcusable and found him guilty as charged. Based on his previous disciplinary record, which

included a five-day suspension for a rule violation, the Claimant was assessed a ten-day suspension for not protecting his job assignment.

The parties being unable to resolve the issue, this matter now 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 reporting to work late for his assignment on September 3, 1992. The record reveals that the Claimant did not attempt to notify the Carrier that he would be late and that his crew had already departed for their work location by the time he arrived. Said action by the Claimant was a clear violation of Rule 604.

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 its action have been unreasonable, arbitrary, or capricious.

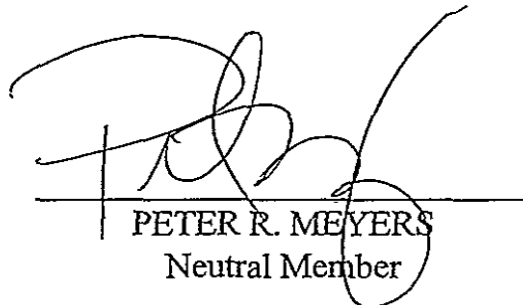
In this case, the Claimant had a 7:30 a. m. start time and he reported approximately 30 minutes late at 8:00 a. m. Claimant's personal record indicates that he was hired in 1981 and received a five-day suspension in 1990. This Board recognizes that the Carrier's discipline policy calls for the next step to involve a ten-day actual suspension. The record also reveals that an electrical storm had caused a power failure which delayed the Claimant from arriving at work on time on the date in question. This Board finds that

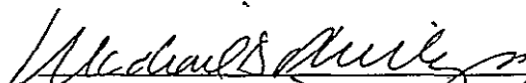
a ten-day actual suspension for this long-term employee for an incident in which he was tardy by only a few minutes, is excessive and unreasonable. This Board finds that the ten-day suspension shall be reduced to a five-day suspension and the Claimant shall be made whole for the other five days of pay.

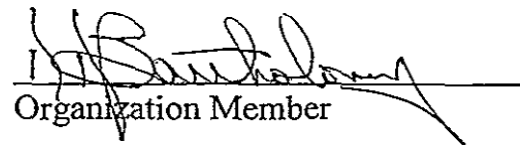
This is not to be interpreted by the Claimant that he was without fault on the date in question. It is the responsibility of all employees to arrive at work on time and to protect their assignments. However, given the circumstances of this situation and his long-term employment, this Board is finding that the action taken by the Carrier is unreasonable.

AWARD

Claim sustained in part. The ten-day suspension of the Claimant is hereby reduced to a five-day suspension and he shall be made whole for the other five days of pay.


PETER R. MEYERS
Neutral Member


Carrier Member *DISSENT TO FOLLOW*


Organization Member

DATED: 12-1-94

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