SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 27
Docket No. 31

PARTIES: Brotherhood of Maintenance of Way Employes.
TO :
DISPUTE: Chicago and North Western Transportation Company.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The fifteen (15) day suspension assessed Machine Operator T. W. Prough for allegedly being absent without proper authority was without just and sufficient cause and in violation of the Agreement. (Organization File CNW-D-1054; Carrier File D-11-24-109).

(2) Claimant T. W. Prough shall be compensated for all wage loss suffered.

FINDINGS: This Board, upon the whole record and all the evidence, finds and holds that the employes and the Carrier involved, are respectively employes and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute herein.

The claimant was assigned as a boom truck operator at Carrier's Short Line Yard in Des Moines, Iowa, with assigned hours 7:30 A.M. to 4:00 P.M. On September 7, 1982, claimant did not report to work until 8:15 A.M., or 45 minutes late. He told the Roadmaster that he had overslept. On September 7, 1982, claimant was notified to appear for formal investigation scheduled for 1:00 P.M., September 13, 1982, on the charge:

> "Your responsibility in connection with absenting yourself from work without proper authority on September 7, 1982."

The investigation was conducted as scheduled, with the claimant present and represented by the General Chairman of the Organization. At the investigation claimant stated that he had been properly notified and was ready to proceed. In the investigation there was substantial evidence, including claimant's statement, that claimant was 45 minutes late on September 7, 1982, because of oversleeping. The Roadmaster also testified that he was aware of claimant reporting 45 minutes late. Following the investigation, claimant was notified of assessment of discipline of 15 days actual suspension, the discipline notice reading the same as the letter of charge.

In the appeal on the property and in its submission, the Organization differentiates between being 45 minutes late and being

absent from work without proper authority and contends that there was no proof of the charge of "absenting yourself from work without proper authority..." It goes on to contend that claimant was charged with one offense, being absent from work without proper authority, and disciplined for reporting late for work. It contends that the charge was not precise, as required by Rule 19(a) of the applicable Agreement.

It has been held that the notice of charge must be tested by what is stated therein. See Third Division Award No. 21419 and others cited therein, and Second Division Awards Nos. 3808 and 6612.

It is also well settled that if exceptions are to be taken to a notice of charge, or the manner in which an investigation is conducted, such exceptions must be taken prior to or during the course of the investigation; otherwise, they are deemed waived. We have carefully reviewed the transcript of the investigation and do not find that timely exception was taken to the charge against the claimant. Exception on appeal came too late.

As timely exception was not taken to the letter of charge, the claim herein will be dismissed.

A W A R D

Claim dismissed.

Paul C. Carter
Chairman, Neutral Member

John D. Crawford
Carrier Member

W. G. Harper
Labor Member

Date: Sept. 17, 1954