

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Hubert Wyckoff—Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

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

(1) That the Carrier violated the effective Agreement when it removed Section Foreman H. A. Logwood from the Carrier's service without first being afforded a hearing as provided in Rule 1 of Article 22 of the Agreement;

(2) That the Carrier further violated the Agreement when it suspended Foreman H. A. Logwood for a period of thirty (30) days without just cause and on the basis of charges unproven;

(3) That Foreman H. A. Logwood's record be cleared and that he be reimbursed for all wage loss suffered account of the violations referred to in Parts (1) and (2) of this claim.

OPINION OF BOARD: Claimant, a Section Foreman who has a clear service record of over 35 years, was discovered coming out of his home in shirt sleeves at 9 A. M. during his regular working hours. He was discovered there by the Carrier's Superintendent, Assistant Superintendent and Welding Supervisor who had started looking for him after not finding him with his gang.

The same day, which was January 15, the Superintendent removed Claimant from service pending investigation "account failure to be with your Section Gang." Investigation was held January 18 at which Claimant was assessed 30 days actual suspension from service, the suspension to begin on January 15. The suspension was based on Rule I which requires employees not to absent themselves from duty without permission.

There is uncontradicted evidence in the record that Claimant was not with his gang by reason of instructions from the Roadmaster to have the gang assist in rail loading under the supervision of the foreman on the adjoining section. It also appears that Rules 111 and 112 require Section Foremen to keep records and make reports and to make comprehensive inspections of their territories. Claimant maintains that he was in his home in connection with the reports which he was required to keep, but there is evidence in the record

that he offered no such explanation on January 15 when confronted by the Superintendent. Further, while Section Foremen are not required to keep records or make reports on their own time, it does not appear that the performance of such work at home off the job during assigned hours was either permitted or customary.

First. Item 1 of the claim charges a violation of that portion of Article 22 Rule I which reads:

"If the offense is considered sufficiently serious the individual may be suspended pending the hearing and decision."

This rule does not authorize routine suspensions in advance of a hearing based on abstract considerations of what is "serious." In a sense any infraction of discipline might be considered serious. The purpose of the Rule is to permit immediate suspensions when the nature of the offense in all the circumstances is such that continuance of the employe in service pending investigation would endanger the safety of operations, interfere with the orderly performance of work or disrupt the administration of discipline.

Moreover, a discreet exercise of the authority to impose an immediate suspension will tend to free the hearing officer of the temptation to off-set with some penalty the monetary losses occasioned by a suspension found upon investigation to be ill advised, particularly when the complaining witness is a superior officer.

Awards on this property hold suspensions pending investigation such as this one to be premature (Awards 5139 and 5140).

Second. Item 2 of the claim challenges both the imposition and the amount of the penalty assessed.

The charge was "being absent from his gang without permission in violation of Rule I" and the suspension was imposed for being "absent from duty without permission." As Section Foreman, Claimant's underlying obligation was to be with his gang at all times except when the performance of his duties called him elsewhere. A good reason for being away from a gang is not necessarily a good reason for being off duty. The charge of being absent from his gang was established and this necessarily involved inquiry into the question whether the absence was justified. It follows that the suspension was sufficiently supported by the charge (see Awards 1513 and 4162).

Upon the record before us we are unable to conclude that there was an abuse of discretion in finding that Claimant was absent from duty without permission.

As to the penalty assessed, for the reasons above stated under paragraph "First," the portion of the suspension assessed for the period prior to the hearing was in violation of Article 22 Rule I.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Agreement was violated in the particulars found in the foregoing Opinion.

AWARD

Item (1) of the claim sustained;

Item (2) of the claim sustained to the extent of three (3) days; otherwise denied;

Item (3) of the claim sustained to the extent of three days pay; otherwise denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 3rd day of June, 1954.