

**NATIONAL RAILROAD ADJUSTMENT BOARD**

THIRD DIVISION

**Award Number** 22160  
**Docket Number** IN-22207

Abraham Weiss, Referee

**PARTIES TO DISPUTE:** ( Brotherhood of **Maintenance** of Way **Employes**  
( Illinois **Central** Gulf Railroad

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

(1) The **suspension of s- (7) days imposed upon Messrs. K. D. Cockrum, C. L. Cockrum, R. W. Burzynski, B. J. Wallace, A. G. Albers, R. J. LeForge, B. A. Minton and B. J. Webster** and the suspension of thirty (30) days **imposed upon Mr. J. R. Schroeder** was unwarranted, without just and sufficient cause **and** an abuse of justice and discretion (System File **SL-192-T-76/134-296-222** Spl. Case No. 1059 **MofW**).

(2) The claimants be compensated for all wage loss suffered."

**OPINION OF BOARD:** The **employes** involved in this **claim** were disciplined because they left the work site to seek shelter during a rain at about **9:30** a.m. on July 27, 1976, after **having** asked supervision for permission to leave and having **been denied** such permission. Claimants, during the **investigative** hearings, **defended** their actions on the allegation that "lightning and **tornado warnings** were out and the fact that we didn't have any track torn out." Supervision, at the **hearing, characterized the rainfall as "medium,"** and stated that they did not believe the conditions were dangerous. **Both** the **employes** involved and management testified that it was not unusual to work in the rain.

Claimants also based **their** action on Rule 29 of the applicable Agreement, governing work during **inclement** weather:

"Rule 29 (a) Hourly paid employees required to report at the usual starting **time** and place for the day's work, and when weather or other conditions prevent work being **performed**, will be allowed a **minimum** of 3 hours; **if** held on **duty** over 3 hours, actual **time** will be paid for.

(b) **Employees** released under paragraph (a) of this **rule** and called back in emergency within their regular **assignment** for further work will be paid **8** hours (including the 3 hours for reporting)."

Claimants **understood Rule 29 to mean**, Petitioner states, that they were not required or expected to work in the **rain** "unless an emergency situation existed or unless **the work had been started** rendering the track impassible."

Effective April 1, 1976, Rule 29 was eliminated by Letter of Agreement. Considerable **testimony** was introduced at the Hearing as to whether claimants (or, for that **matter**, various **members** of supervision of the gang of which claimants were members) were aware of **the** elimination of Rule 29 and revisions of **Rule 18 (c)** effective April 1, 1976. Petitioner also maintained that most of the claimants were never **furnished** a copy of Rule **"P"** of **"Rules** for the Maintenance of Way and Structures," **which** the claimants **were** charged with violating. **Rule P** states **in pertinent part:**

**"...Employees must not absent themselves from** their duties nor substitute others in their place **without** proper authority...."

Rule 18 (c) as revised reads:

"When less than 8 hours are worked at the request of employees only actual time worked or **held** on duty will be paid for."

**Carrier** states that on March 24, 1976 all of the changes in the rules were sent to all of the divisions with **an explanation**, as follows as they relate to Rules 18 (c) and 20:

**"Rule 18 (c) - Employees** will still be required to obtain **permission** to lay off for a portion of a work day."

**"Rule 29 - This rule** was eliminated. Employees will now be **required to** work in any type of **weather**. An employee **who** shows up will be entitled to 8 hours pay unless he can obtain permission to lay off under Rule 18 (c)."

Petitioner argues that under **many** prior Board decisions, **an employe** need not perform an act which could endanger his **own** health, safety and/or welfare of others, and that the lightning strikes in the **immediate** vicinity **made** it unsafe to work out in the open. **Hence**, it concludes, claimants were justified in leaving the work site to seek shelter from the storm.

Petitioner also argues that the **30-day** suspension for Claimant Schroeder and the 7 day **suspension** imposed upon **the** other claimants for precisely the **same** alleged offense on the **same** date constitute an arbitrary and capricious **imposition** of discipline.

Carrier disputes the intensity of the storm, characterizing it as "**medium rain**" and not dangerous, and cites **testimony** by its **super visory employes and by the claimants that it was not unusual to work in the rain.** Moreover, **other members** of the gang **remained** on the job, **working with supervision, and performed their work without incident.**

More **fundamental, however, in** Carrier's view, is that the rules do not give **employes** the prerogative or authority to leave work or absent themselves at will and without permission. The fact that **claimants requested permission from their** supervisors to leave work on the date in question **demonstrates** their **knowledge** of the fact that they had to request **permission** to leave, for **whatever** reason. **This,** Carrier maintains, indicates their awareness of the rules **and** appropriate behavior under the **circumstances.** As added **confirmation,** Carrier cites the testimony of **the** Track **Supervisor** at the investigation that claimants knew Rule 29 had been eliminated because he "told them." This statement was not contradicted in the record.

**That claimants left work without permission is uncontroverted** in the record before us. **Given the** conflicting statements as to the state of the weather, and whether it was **unsafe** to work, a few facts, proffered by either party, would have been helpful to this Board in coming to a conclusion as to whether a safety or danger factor was present. The fact **that** eight other **employes, plus their supervisor,** worked in **the rain on that same day without** incident and that four carrier supervisors testified that the weather presented no danger to the **employes** is persuasive. We, therefore, are of the opinion that claimants were **in** the wrong **and** in violation of the applicable rules requiring permission to leave their duties. Accordingly, we will sustain their 7 day **suspension,** except for Claimant Schroeder, to whose case we will now turn.

Claimant Schroeder's suspension, as noted in the Statement of Claim, **was for** 30 days. Schroeder, according to the record, was the first to request permission for himself and for **the other claimants** to leave on account of the rain, a request that was denied by **the Supervisor in** the **presence** of other **employes.** Carrier justified Schroeder's 30 day suspension (compared to 7 days for the other claimants)

on the grounds that his attitude **encouraged** the other **employees** to leave work and that he instigated the disruption of the **work** force, and that his personal record was worse than that of the other claimants and hence warranted a greater measure of discipline. In **substantiation** of the latter charge, Carrier **submitted** an exhibit (**Exhibit** D-9).

Exhibit B-9 does not substantiate Carrier's case. As of the time of the incident **on** July 27, 1976, all that Schroeder's personal record shows is three injuries, with no lost time and no indication of **employee** fault. There is **no indication** or evidence of previous discipline or warnings of rule infraction or violation of safety rules.

The record indicates that several of the **claimants** independently approached the acting Foreman to ask permission to **leave** because of the rainfall. The record also indicates that a half hour elapsed **between** the time Schroeder first asked permission to leave and the time he and several of the other **claimants** left their jobs, and that another claimant left his job about one hour after Schroeder **made** his request. Taken together, these events do not support Carrier's contention that Schroeder was a ringleader.

We are of the opinion that Carrier has not **made** a case for assessing a **30 day suspension on** Claimant Schroeder **while** imposing a 7 day **suspension** on the other **claimants**. **This Board** finds that Schroeder's 30 day suspension was excessive and that suspension should be for the same period as meted out to the other claimants; i.e., 7 days.

Accordingly, Claimant Schroeder's **suspension** should be reduced **from** 30 days to 7 days, and he should be compensated for the wage loss suffered.

**FINDINGS:** The Third Division of the Adjustment Board, upon the **whole** record and all the evidence, finds and holds:

That the parties waived oral hearing;

**That** the Carrier **and** the **Employees** involved in this dispute are respectively Carrier **and Employees 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

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That **the Agreement was** violated to the extent shown in Opinion.

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claim **sustained** in part and **denied** in part in accordance with the above **Opinion and Findings**.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **Third Division**

**ATTEST:** *A.W. Pauls*  
Executive Secretary

Dated at Chicago, **Illinois**, this **31st day** of **July 1978**.