

The Second Division consisted of the regular members and in addition Referee Jonathan Klein when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Milwaukee-Kansas City Southern Joint Agency

Dispute: Claim of Employees:

1. That the Milwaukee-Kansas City Southern Joint Agency violated the controlling agreement, as amended, and the Railway Labor Act, as amended, when it suspended Carman David Hayes from service from July 1, 1983 through August 29, 1983.
2. That the Milwaukee-Kansas City Southern Joint Agency be required to pay David Hayes his proper pro rata rate for each day lost, commencing July 1, 1983, and continuing through August 29, 1983, crediting each day's pay to a calendar date and remove all mention of this hearing and discipline from his personal record.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On May 11, 1983, Claimant was instructed to report for a formal investigation on the charges of:

Failure to turn in time cards at end of your shift for the dates of April 17 and 19, 1983, as required by current instructions, and your failure to show correct and true information on time card for April 19, 1983, concerning time on duty.

Carrier's general Rule N, paragraph 4, provides as follows:

"Employes must show on time-slips, timebooks, or payroll required information as to work actually performed. Such employes will be held responsible for the accuracy of these reports."

The Organization posits that the above-quoted charge is vague and imprecise. This Board has often announced the principle that the failure to recite a *specific rule in a notice of charge is insufficient, in and of itself* to amount to a due process violation. Carrier's charge adequately notified Claimant of the behavior which was the focus of the formal investigation and the precise date of the alleged violation. Claimant was afforded sufficient time and notice of the charge in order for him to adequately prepare his defense.

The Organization has raised several issues concerning the conduct of the investigation by the Hearing Officer. There is no evidence, however, that the Hearing Officer was biased or otherwise failed to provide Claimant with a fair and impartial investigation. The Organization has raised the specter of a standard practice of "kickback" with regard to improperly completed time cards. In order to support the defense that it is common practice for a time card which has been *improperly completed by an employee to be "kicked back"* to him for correction without penalty, and then submitted to Accounting, the Organization asked for the Carrier to call a clerk as its witness.

This Board views with disfavor the failure of Carrier to present the clerk as a defense witness at the investigation, particularly where the witness is a Carrier employee who is on duty at the time of hearing. While it is true that no request was made prior to the investigation by the Organization for this specific witness to appear, such an appearance cannot always be anticipated in advance of hearing.

The Board finds, however, that any error committed in failing to arrange for the appearance of this witness was harmless in light of the evidence presented by the Claimant himself. Under questioning by the Hearing Officer, the Claimant testified according to the Transcript as follows:

"Q. On April 19, 1983, what was your work assignment.

"A. Work 7:30 to 4 o'clock on Repair track

"Q. What time did you report for your work assignment on that day

"A. 12:45 after coming back from the dentist

"Q. What was the total that you were on duty on your work assignment on April 19, 1983

"A. 3 hours and 15 minutes.

* * *

"Q. Concerning the two timecards of which I just furnished you a copy when did you turn in these two time cards

"A. 1st time was the 17th and the 19th, second time was on May 1 when the clerk told me I was missing some time cards. At that time I asked Mr. Lincoln if anything was incorrect if I could have my timecards back and resubmit it. There was no answer.

"Q. Do the current instructions require you to turn in time cards at the end of each shift.

"A. Yes.

"Q. Referring to the timecard dated April 19, were [sic] you claim working 8 hours on the Repair track is this claim correct

"A. No."

In this Board's decision in Claimant's companion case, Award No. 10675, the effect of the Memorandum of Agreement between the parties was addressed, and we find the rationale expressed therein to be equally applicable to this case. The Board finds that the Carrier did not meet its burden of proof as to the charge that Claimant failed to turn in time cards for April 17 and 19, 1983, but did prove that Claimant did not submit accurate replacement time cards when requested to do so. While Claimant does not appear to have intentionally submitted false time claims, his record of prior violations of the Carrier's rules with regard to accurate time cards suggests a negligent, and even grossly lax attitude on his part. Based upon the evidence, Claimant's prior record and the assessment of discipline approved in Award No. 10675, this claim is hereby denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of December 1985.