

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

Crew Dispatcher A. F. Walker, Phoenix, Arizona, be restored to service with all rights unimpaired and compensated for all wage loss sustained retroactive to January 23, 1951.

OPINION OF BOARD: The claimant was charged with being asleep while on duty on January 16, 1951 and there was evidence adduced at the investigation from which it could reasonably be determined that he was guilty of the charge. Considering the fact that he had been warned about such offense on several occasions and at least as recently as December 9, 1950, we are unable to say that the carrier's action was arbitrary or the penalty excessive.

It should be noted that the organization contended that the carrier admitted that the penalty was excessive, particularly because the case was remanded by the assistant general manager to the division for further handling, and asserted, on the basis of exhibits, that such a remand for further handling means that favorable consideration will be given. The exhibits indicate that in each of those cases after remand there was a reinstatement on a leniency basis.

There is a vast difference between the correction of an excessive penalty and reinstatement on a leniency basis. We can correct an excessive penalty because the imposition of such a penalty is a violation of those provisions of the agreement which are adopted to protect employees from arbitrary, capricious or discriminatory discipline by the carrier. Reinstatement on a leniency basis is a discretionary remission of an appropriate penalty. We do not remit penalties on a leniency basis because we have no power or right to exercise managerial discretion.

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

That the parties to this dispute waived oral hearing thereon;

That the Carrier and Employee involved in this dispute are respectively Carrier and Employee 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 24th day of February, 1953.