

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19502
Docket Number MW-19485

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Illinois Central Railroad Company

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

(1) The suspension of one hundred twenty (120) days imposed upon Extra Gang Laborers J. E. McGee and F. J. McDonald was improper and without just and sufficient cause (System File SLN-105-T-70/Case No. 711).

(2) The personal record of the claimants be cleared of said suspension and reimbursement be made for wage loss suffered in accordance with Rule 25(i).

OPINION OF BOARD: Claimants, extra gang laborers, were suspended from service for a period of 120 days for failure to perform their duties satisfactorily during rail laying operations on December 5, 1969.

At the investigation, Carrier produced three witnesses, Division Engineer Lager, Track Supervisor Coyadd, and Foreman Gale, who testified that claimants were not performing their duties in a satisfactory manner and were consequently causing considerable delay to the rail laying operation.

Claimants testified at the investigation that the delay to the operation was caused by operational difficulties and train movements. They claimed that they were working to the best of their ability and they believed their work to be satisfactory.

It is well established that in discipline cases such as the one before us it is not our function to weigh the evidence adduced at the investigation, nor to pass on the credibility of witnesses, nor to substitute our judgment for that of the Carrier. Rather it is for us to look at the record and ascertain whether Carrier's decision was unreasonable, capricious or arbitrary.

We find that there was sufficient evidence adduced at the hearing to support the finding of guilt. However, we believe that the penalty of 120 days suspension was unreasonable and excessive under the circumstances. Both claimants have seven years of service with the Carrier and, but for the present violation, they both have clear service records.

Based on the above, we find that the proper measure of discipline should be suspension for fifteen (15) days. Accordingly, we will uphold the first fifteen (15) days of suspension and reimburse claimants for the remaining days that they were suspended in accordance with Rule 25(i). The proper measure of damages for the 105 days that they were improperly suspended is the

difference between any actual earnings during this period and the amount they would have earned had they not been suspended.

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 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

That the discipline imposed was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. L. Killen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1972.