

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **19810**  
Docket Number **MW-19438**

Alfred H. Brent, Referee

PARTIES TO DISPUTE: { (Brotherhood of Maintenance of Way **Employes**  
(Missouri-Kansas-Texas Railroad Company

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

(1) The suspension of Section Laborer Marvin O. Harris from August 13 to August 21, 1970 and from August **28** to September 10, 1970, inclusive was without just and sufficient cause.

(2) The Carrier violated Rule 5 of Article 23 when it failed to furnish General Chairman **Uptergrove** a copy of the decision rendered subsequent to the investigation held on August 28, 1970.

(3) Section Laborer Marvin O. Harris be compensated for all wage loss suffered because of the violation referred to within Part (1) of this claim.

(4) The Carrier shall also pay the claimant eight percent (8%) interest per annum on the monetary allowance accruing from the initial claim date until paid.

OPINION OF BOARD: The Organization contends that the petitioner was improperly suspended by the Carrier from August 13 to August 21, 1970 and from August 28 to September 10, 1970 for being absent without prior report on August 6 and 7, 1970. The reason given for the absence on those days was that the claimant was in jail **as** a result of his failure to answer a traffic violation.

The Organization also claims that the General Chairman who appeared at the investigation as the representative was never sent a copy of the decision rendered subsequent to the investigation in this case.

And finally, the Organization requests that the petitioner be made whole for Lost wages plus interest at 8%.

The Carrier contends that the claims of the Organization are barred under the time limits set forth in the Agreement between the parties and that the Organization's claim that the Carrier failed to send the General Chairman a copy of its decision within 10 days has not been proven. And furthermore, even if this contention had been proven, there would have been no violation. The record shows that the claimant's assertion that it was impossible for him to call since he was in jail ignores the patent fact that he was in jail for his own misconduct.

This Board has held that where a claim has been permitted to expire under a time limit rule it cannot properly be refiled and submitted to this Board. See **Coburn** Award #12851, Engelstein Award #14829 and McGovern Award #16265.

Moreover, in cases of discipline, this Board has held time and again that it would not substitute its judgment for that of the Carrier on the issue of guilt and discipline, absent a showing that the Carrier was arbitrary or unreasonable. Parker Award 5032, Bernstein Award 9422.

The Board has held that absence from duty during assigned hours was in fact a serious offense and hence, the **15** day suspension would not be unreasonable. However, justice and equity require that this Board find that the appeal by the General Chairman that the penalty imposed was improperly calculated was timely made under Article 28 Section 14 (which provides a 60 day time limit) and that the Carrier be directed to **recalculate** the penalty and **make** the petitioner whole for the lost earnings resulting from the Carrier's misapplication of **commencement** and ending of the **15** work day suspension.

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

That the Agreement was not violated.

A W A R D

Claims 1, 2 and 4 are dismissed. However, with reference to Claim 3, the Carrier shall recalculate the penalty and make the petitioner whole for the lost earnings resulting from Carrier's misapplication of **commencement** and ending of the 15 work day suspension.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*E. A. Killen*  
Executive Secretary

Dated at Chicago, Illinois, this 20th day of **June 1973**.