

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20502
Docket Number MW-20432

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Chicago, Rock Island and Pacific Railroad Company

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

(1) The Carrier, without just and sufficient cause and on the basis of unproven charges, improperly disciplined Mr. Frank Castro, Jr. on charge6 that

(a) he allegedly failed to properly record time on duty May 8, 1972 (System File 3-D-444);

(b) he allegedly failed to properly record time on duty May 19, 1972 (System File 3-D-450);

(c) he allegedly was insubordinate on June 12, 1972 (System File 3-D-451).

(2) The above charges be stricken from Mr. Castro's record and that he be reimbursed for all earnings lost in conformity with Rule 19.

OPINION OF BOARD: The Employees seek to have this Board vacate three separate discipline6 which were assessed against the Claimant, a MoFW Track Foreman, between May 8 and June 12, 1972. Following a hearing in each instance, the Claimant was found guilty of the following infractions:

1. Failure to record on duty time for May 8, 1972 properly;
2. Failure to record on duty time for May 19, 1972 properly;
and
3. Insubordination on June 12, 1972.

For the first infraction the Claimant was assessed twenty (20) demerits. For the second and third infractions, he wa6 assessed discipline of forty-five days suspension for each infraction.

The **Employees' submission discusses** each individual infraction and its concomitant hearing record; they request that the discipline for each and every infraction be set aside, that the Claimant's record be cleared, and that he be awarded pay for time lost. The essence of the **Employees' submission** argument for vacating the three discipline assessments is that the hearing evidence does not support the finding of guilt and that the discipline is excessive, capricious, improper, and unwarranted. The Carrier's position is that the discipline was proper and should not be disturbed. Both parties appeared in 8 Referee Hearing. The Claimant, himself, was present at this hearing and spoke extensively in his own behalf. He discussed documents not contained in the printed record and, without objection by the Carrier, Such documents were taken into custody by the Board.

The record contains no due process or other procedural defects. Our function, therefore, is to review each of the disciplinary actions, in light of the record before us and the arguments heard in Referee Hearing, in order to determine whether such action is violative of the parties' Agreement and whether such action meets this Board's established criteria for disciplinary cases.

FIRST INCIDENT: The hearing record regarding the May 8, 1972 incident shows that the Claimant's regular assignment was 8 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m., Mondays through Friday, with Saturday and Sunday rest days. On the date in question, May 8, 1972, the laborer in the Claimant's crew worked the hours of 8:00 a.m. to 12:00 noon and 1:00 p.m. to 9:00 p.m. Their time for such work was eight hours straight time and four hours overtime. However, the Claimant was absent with permission from 8:00 a.m. until 12:00 noon; he then worked with his crew from 1 p.m. until 9:00 p.m., which resulted in his time being four hours straight time and four hours overtime. However, in preparing the time slips, he entered eight hours straight time and four hours overtime for the entire crew, including himself; this constituted a four hour overcharge for straight time in regard to himself. Upon being asked about the matter by supervision, the Claimant readily admitted that he had not worked the morning hours on the date in question and explained that the error was an inadvertent oversight. As put in his words at the hearing: "Through unintentional errors made, I admit that I violated Rule 147." (Rule 147 of the R&R of the MoFW and Structures, accurate reporting of time.) The guilt of the first infraction is therefore established by the Claimant's own admission.

SECOND INCIDENT: The May 19, 1972 incident involves the Carrier's allegation that the Claimant worked about an hour less than his regular eight hour day, but recorded time for the full eight hours. Roadmaster Duffe said that the Claimant phoned him on the morning of May 19, saying that he, the Claimant, would have to leave early that afternoon due to his child having been in an auto accident. Later that day, the Roadmaster said he saw the Claimant get into his automobile at Englewood and leave

the company property. As the Claimant got into his automobile, the Roadmaster pulled out his watch and told Asst. Roadmaster Kriegel that it was exactly 4:00 p.m. The Asst. Roadmaster corroborated the statements of the Roadmaster. The essence of the Roadmaster's testimony was sharply contradicted by the Claimant, although he did indicate that something was said at some time during the day about his not being able to work overtime. On the element of time, however, the Claimant testified he did not depart from Englewood until 4:35 p.m., that he traveled in his auto from Englewood to 12th St. and Taylor Street, and that he was at this latter location on company business at 5:00 p.m. or 5:15 p.m. He said that, while in the vicinity of 12th and Taylor Street, he spoke to a signal maintainer whose name he gave; however, he did not present the maintainer as a witness or ask to have his statement included in the record. The evidence in this instance involves a direct conflict in the essential facts and, thus, the finding of guilt is based on a resolution of a credibility issue.

THIRD INCIDENT: The incident of June 12, 1972 also involves Roadmaster Duffe and Asst. Roadmaster Kriegel. In this instance a discussion about work between the Roadmaster and the Claimant evolved into a discussion of the May 19 incident and the evidence they would give in the hearing on the incident which was scheduled for June 29. This discussion became acrimonious and the Roadmaster ended it by directing the Claimant "to get a shovel and start working." The Claimant did not obey the directive, and started walking toward the yard office. The Roadmaster told the Claimant to go back with his men and again directed him to get a shovel and go to work. The Claimant continued to refrain from getting a shovel as directed, whereupon the Roadmaster took action to have the Claimant removed from service for insubordination. The Asst. Roadmaster corroborated the Roadmaster's testimony. Two laborers who testified for the Claimant indicated that the conversation between the Roadmaster and the Claimant was acrimonious, but they could not give any detail of the conversation. They, too, said that the Claimant did not start working with a shovel at the time in question. The Claimant admitted that he did not follow the directive to get a shovel; however, he said his reason therefor was the need to supervise the men for considerations of safety. The Carrier controverted the contention about safety, saying that no safety considerations were involved. There was some evidence of slight physical contact between the Roadmaster and the Claimant, but the Claimant did not relate this element to his refusal to obey the Roadmaster's directive.

Our review of the foregoing, and the whole record, including oral argument, does not disclose any basis for vacating the herein discipline. The Claimant admitted making an erroneous time-entry in the first incident, but the only consideration here is whether the quantum of discipline was excessive. Even though the error may have

been inadvertent, ⁶⁶ asserted by the Claimant, the Carrier still had the prerogative to dispense 8 suitable discipline to induce greater care in making time-entries in the future. The discipline of twenty (20) demerits seems suitable for this purpose, and we believe that such discipline cannot be said to be excessive in the circumstances herein. As regards the second incident, another erroneous time-entry, the hearing record shows that a credibility issue arose between the Claimant and the two Carrier witnesses who said they saw him leave company property an hour earlier than normal quitting time. Such issue was resolved against the Claimant by the Carrier and 8 finding of guilt was made. The record before us affords no basis for disturbing the resolution of the credibility issue and also contains substantial evidence to support the finding of guilt. As to the quantum of discipline, since essentially the same infraction had occurred very recently, we believe the discipline of forty-five (45) days suspension cannot be said to be excessive. The third incident, insubordination, is more complex than the previously discussed incidents, for we have no doubt that both the Roadmaster and the Claimant contributed to the acrimonious nature of the conversation which formed the background of the incident. The significant fact, nonetheless, is that the Claimant admitted that he disobeyed an explicit directive and offered safety reasons as exoneration for his action. However, the record contains no convincing evidence to validate his safety defense, ⁶⁰ we can only state that he should have obeyed the directive and grieved later. Again, the record contains substantial evidence to support this discipline. Also, in view of the close relationship between this incident and the two previous ones, we believe it cannot be said that the discipline of forty-five (45) days is excessive. We shall deny the claim.

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

The Agreement was not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 8th day of November 1974.