

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20587  
Docket Number SG-20644

Joseph A. Sickles, Heferee

**PARTIES TO DISPUTE:** { **Brotherhood of Railroad Signalmen**  
(Missouri Pacific Railroad Company)

**STATEMENT OF CLAIM:** Claim of the General Committee of the **Brotherhood** of Railroad Signalmen on the Missouri Pacific Railroad Company that:

Mr. J. T. **Harrell**, Assistant **Signalman**, who was dismissed from service following formal investigation concluded at Day City, Texas, on April 25, 1973, was not afforded a **fair** and impartial investigation, and **was** improperly withheld from service from April 9 to **May 3, 1973**, in violation of **Rule 700(b)**, should now have **his** personal record cleared of the charge, be promptly reinstated to his former position with full pay for time lost and with seniority, vacation, and **all** other rights unimpaired.

[Carrier's File: D 225-635]

**OPINION OF BOARD:** Claimant, on two occasions, requested a leave of absence. He falsified the reason for the request to both Supervisors. Although both requests were denied, nonetheless, he absented himself from duty (without authority) on April 2, 3, 4, 5 and 6, 1973.

**Claimant** urges that he did not **receive** a fair and impartial investigation. He refers to a remark made by the Hearing Officer when the initial hearing was postponed (**at** Claimant's request), and he argues that he should not have been withheld from service pending investigation.

We have fully considered the entire record, and the controlling **Rules Agreement**. We are **unable** to conclude that any of Claimant's substantive procedural rights were violated.

Claimant conceded, at the Investigation, that he did absent himself from duty during the week of April 2, 1973. **Accordingly**, the only question which **remains** deals with the quantum of punishment imposed.

Claimant's lack of candor **is** significant to our consideration. He was faced with a serious problem, and quite conceivably, a truthful disclosure to his Supervisors might have resolved the situation. Thus,

imposition of severe discipline was warranted. However, upon our consideration of the entire record, the Board concludes that permanent dismissal was excessive.

We are compelled to note that Carrier has presented a document to this Board, concerning quantum of punishment, which must be totally disregarded. At Page 6 of its Rebuttal, Carrier refers to Claimant's unsatisfactory work record, and attaches a **November 19, 1973 intra-Carrier** document. The Notice of intention to file an ex **parte** submission to this Board is dated November 30, 1973. There **is** absolutely nothing of record to suggest that the November 19, 1973 document, or its contents, **were** ever considered by the parties while the matter was under consideration on the property. The rather inflammatory contents of the document **are** not properly before us, as the well reasoned **Rules** of this Division render the document clearly inadmissible for our considerations.

Claimant shall be restored to duty, with seniority and other rights unimpaired, but he shall not be entitled to compensation for time held out of service.

**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 appmved **June 21, 1934**;

**That** this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

**A W A R D**

Claim sustained to the extent stated in the Opinion of the **Board**.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of January 1975.