

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21657
Docket Number MW-21658

David C. Randles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Norfolk and Western Railway Company (Lake Region))

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

(1) The suspension of fifteen (15) days imposed upon Assistant Section Foreman Rex Trizzle, Jr. for allegedly "engaging in activities which would interfere with or distract your attention from your work" was capricious, arbitrary, without just and sufficient cause and on the basis of unproven charges (System File MW-FKT-74-1).

(2) Assistant Section Foreman Rex Trizzle, Jr. shall now be allowed the benefits prescribed in Agreement Rule 22(e).

OPINION OF BOARD: This is a discipline case involving fifteen (15) days actual suspension assessed against Assistant Section Foreman Rex Trizzle, Jr.. On August 15, 1974, claimant was assigned work from 7:00 A.M. to 4:00 P.M. with an 11:00 A.M. to 12 Noon lunch hour. Claimant and two other employees traveled by claimant's personal car from Brocton to Metcalf in order to move a brush cutter. On the way back to Brocton, claimant's car had transmission trouble. Securing a ride into town, claimant secured the use of a truck belonging to an accompanying employe and returning to his vehicle they towed it to claimant's home during lunch hour. Upon arriving at claimant's home, two individuals accosted claimant and his fellow employe. When claimant "came to", he learned that his fellow employe was in pain. Claimant then borrowed a car and took said injured employe to the hospital.

Claimant was notified to report for a hearing scheduled originally for September 11, 1974, and postponed until October 9, 1974, to determine claimant's "responsibility while on duty in engaging in activities which would interfere with or distract your attention from your work".

Following the investigation, Carrier assessed the discipline by letter of October 22, 1974, which reads in part: "For your responsibility as developed in the hearing, you are assessed fifteen (15) days actual suspension and Roadmaster Smith will advise you when to serve this discipline." An amended letter of October 23, 1974 reads in part: "Please disregard my letter of October 22, 1974, and the following is corrected

letter:- For your responsibility as developed in the hearing, you are assessed fifteen (15) days actual suspension and **Roadmaster** Smith will advise you when to serve this discipline." Both letters were signed by G. W. Woods, Division Engineer-Maintenance.

Originally the Organization made part of its appeal based upon a procedural flaw which they subsequently abandoned, and now present before this Board the allegation that the discipline was without just and sufficient cause and on the basis of unproven charges.

This Board has held on innumerable occasions that it is not the **function** of said Board to substitute its judgment for that of the Carrier in discipline cases. **However**, upon careful review of the record, we do feel that the claimant was charged with the entire responsibility for the events occurring on August 15, 1974, which the record does not support.

A basic tenet of arbitral review is that the discipline **must** be reasonable. There is no evidence to suggest that the Carrier considered any of the mitigating circumstances surrounding this case; and, therefore, we must consider that the discipline is too severe and excessive. We shall, therefore, reduce the discipline imposed to five (5) days without **pay**. Accordingly, the claim is sustained to the extent that Carrier shall **amend** claimant's record to show a five (5) day suspension and shall compensate him for ten (10) days wage loss suffered less outside earnings, if any.

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 discipline be reduced.

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The claim is sustained to the **extent** indicated in the opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST : *AW. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 18th day of August 1977.