

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22146
Docket Number MW-22137

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Southern Railway Company

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

(1) The dismissal of Foreman T. W. Hayes for alleged violation of Rule 'G' was excessive, unwarranted and an abuse of justice and discretion (Carrier's File MW-89).

(2) Foreman T. W. Hayes be reinstated with seniority, vacation and all other rights unimpaired and he be compensated for all wage loss suffered."

OPINION OF BOARD: This is a Rule "G" dispute in which there is no question but that Claimant was guilty as charged. Further, no issues relating to procedure were raised; there was a fair and impartial investigation of the charges. The sole question raised by the Organization relates to the measure of discipline imposed. Claimant, a foreman, had been employed by Carrier for thirty three years (eighteen as a foreman) and had an unblemished record prior to this incident. Petitioner alleges that the discipline imposed by Carrier was excessive.

Carrier points out that, Rule G is the only Carrier working rule which mandates dismissal as a penalty and the rationale for this harsh penalty is obvious in view of the dangers inherent in violations. Carrier argues that particularly for an employee in a supervisory capacity a violation of Rule 6 is intolerable.

It is well established that this Board may not substitute its judgment for that of Carrier in discipline cases, particularly with respect to penalty, unless it can be shown that Carrier's actions were arbitrary, capricious or discriminatory. Even though we were sitting in judgment we might well have decided on a different penalty, we have no basis for disturbing Carrier's conclusion herein. There is no question but that this Board has repeatedly affirmed Carrier's rights to dismiss employees for Rule G violations. Long years of unblemished service may serve to mitigate a penalty when there are some doubts about guilt (c.f. Award 18036), but such mitigation is not applicable here. The claim must be denied.

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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1978.

