

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22723
Docket Number SG-22495

Kay McMurray, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company
(Pacific Lines)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company:

On behalf of Leading Signalman F. A. Dickie for pay for all time lost as a result of a forty-five day suspension effective September 21, 1977, and on behalf of Signalman G. A. Olsway for removal of thirty demerits assessed effective October 6, 1977." [Carrier files: 011-181 (D), 011-222 (O)]

OPINION OF BOARD: There is no dispute with respect to the facts in this case. On September 20, 1977, the Claimants were serving as Lead Signalman and Signalman, respectively, at the Carrier's property in Salinas, California. Early in the morning, a verbal confrontation ensued over the dirty condition of one of the Carrier's pickup trucks. Shortly thereafter, Claimant Dickie was granted permission to take the day off in order to regain his composure. At approximately 4:00 p.m. that afternoon after Claimant Olsway had completed his work assignment and was walking through the gate to leave the property, he was accosted by Mr. Dickie and a physical altercation took place which resulted in the necessity for several stitches below the right eye of Mr. Dickie and relatively serious injury to the left elbow of Mr. Olsway.

Appropriate notices were sent and a hearing was conducted on September 28, 1977. As a result of the hearing, the penalties herein complained of were assessed on October 6, 1977.

As justification for the penalties, the Carrier relies upon the following Rules:

- 801 - "Any act of hostility...is sufficient cause for dismissal
- 802 - "Courteous deportment is required of all employees in their dealings with...their subordinates and each other."

In defense the Organization alleges a procedural **error** regarding the application of **Rule 59(b)** which reads: "If **discipline is** to be assessed a transcript of the testimony taken at the investigation shall be **furnished** to the **employee** under charge **and** his representative within ten (10) calendar days after the close of the **investigation.**" They point out that the local **chairman** did not receive his copy until October 11, which **is beyond** the **10-day** time limit. **However,** the record indicates that a copy of the transcript was **mailed** to him on October 6, the same day the discipline letters were acknowledged by the grievant. It is a well settled principle of law upheld by this Board on numerous occasions that the date of mailing is utilized for the purpose of determining compliance with such **time limits.** **The mailing date was** within 10 days as **required** and this Board **must** rule **that Rule 59(b) was** not violated.

The Organization further contends that the investigation is flawed by the absence of at least one important witness. The **transcript** of the hearing reveals that the Organization was asked on two separate **occasions** whether it desired additional witnesses. The **responses** were **in the negative.** **Since** ample opportunity for additional witnesses was given at the **investigation,** the Organization cannot raise such objection after the investigation **is** concluded.

It is generally true, as **claimed** by the Organization, that action off the property **must have** careful scrutiny before any penalty can be assessed.

In the case at bar, however, the altercation took place **just** a few feet from the gates of the **company** premises **and** in full view of all **employees who were going off shift.** Under **such** circumstances, the rules quoted in **this** opinion might be seriously weakened if they were not applicable.

All employees, as well as the Carrier, have an interest **in** assuring that human relations in and around the work place are kept as harmonious as possible. The actions of the **Claimants** militated against that objective. **This** Board finds that some disciplinary action was merited.

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 January 1980.