NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23293
THIRD DIVISION Docket Number MW-23411

John B. LaRocco, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance or way Employes
(St. LOUIS-San Francisco Railway Company

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

(1) The discipline assessed Foreman R. W. Helton was without just and sufficient cause, arbitrary andunreasonable (System Pile B-1424).

(2) The claimant's personal record shall be cleared of the charge and he shall be compensated for all wage loss suffered from February 5 through April 1, 1979."

OPINION OF BOARD: Claimant, a track foreman in charge of gang 401, was dismissed from service on February 5, 1979. Pursuant to Article II, Rule 91(b) (1) of the applicable Agreement, the Organization requested a plenary investigation. on February 14, 19'79, the Carrier formally charged the claimant with an unauthorized absence ror February 3, 1979 and forsubmitting inaccurate hours worked for himself and two members of his gang covering January 29, 30 and 31, 1979. After a hearing held on February 22, 1979, the Carrier found the claimant had committed both infractions but due to claimant's length or service, the Carrier rescinded the dismissal and assessed a penalty or fifty six days suspension.

We turn first to the unauthorized absence charge. Claimant's gang worked a sixteen hour day on February 2, 1979 (until 1:30 a.m.) and claimantvaa Instructed to report to work at 10:00 a.m. on Saturday, February 3, 1979. Claimant had originally planned to have his automobile serviced on Saturday. On Saturday, the claimant's auto broke down. Claimantcalled the Carrier and therevas some dlsputevhether claimant said he would be late or absent. Claimant never did report to work and never received permission to be absent. Due to claimant'sabsence, another foreman had to work three consecutive shifts. The Organization argues that the claimant had good cause for his absence since the car trouble was beyond his control. The Carrier contends that the claimant's car excuse8 were a subterfuge for taking the day off, at a time, when the claimant knew that the Carrier had an urgent need ror manpower.

After carefully reviewing the record, we conclude that there is substantial evidence to support the unauthorized absence charge. While

claimant submitted repair invoices demonstrating his automobile was serviced, the service station bills were dated several days after February 3, 1979 and covered such items as fuel and a tune-up which can hardly be characterized as emergency repairs. Claimant knew the Carrier desperately needed him on Saturday, yet he failed to even adequately notify the proper Carrier officials that he would not report to vork. Claimant further aggravated the situation when, on the following Monday, he curtly responded to the Roadmaster's inquiry into why he vas absent. Claimant said his absence was not the Roadmaster's problem. Thus, under the circumstances, claimant engaged in an impermissible absence on February 3, 1979.

Claimant was also charged with inaccurately or incorrectly reporting the hours he and several members of his crew worked on January 29, 30 and 31, 1979. The hours submitted by the claimant were wed to compute the payroll. The Carrier contends claimant was late on January 29 aud 30 and two gang members were tardy on January 31. The Organization argues the claimant accurately reported hours worked (pursuant to discussions with the Roadmaster) and even if he committed an error, he had no intent to pad the Carrier's payroll.

Based on the vague record before us, we must sustain the employe's claim on this charge. Claimant conceded he was late on the days in question and there is no indication either in the payroll records or the Roadmaster's notes that the claimant reported too many hours. Indeed, if anything can be gleaned from the sparse evidence, it seems that some overtime hours may have been held over to the next pay period. As to the number of hours worked by the two crew members on January 31, 1979, the claimant had no first hand knowledge they were late since he vas absent on that date. The claimant tried to ascertain the hours they worked by calling the tool house, but it Is unclear as to whether he received reliable information. The Carrier proffered no evidence demonstrating the claimant intended to extract excessive pay from the Carrier.

Because the Carrier failed to meet its burden of proof on the payroll charge, ve will adjust the discipline. The suspension shall be reduced from fifty-six days to thirty days. A thirty day suspension is a reasonable penalty for claimant's unauthorized absence. Claimant shall be paid back wages actually lost for the remainder (after the thirtieth day) of the fifty-sir day suspension that he served.

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 Employes involved In this dispute are respectively Carrier and Employes 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 violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1981.