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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23329  
Docket Number CL-22800

Martin F. Scheinman, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE:

I  
(Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8715) that:

Carrier violated the Agreement at Atlanta, Georgia, when it  
suspended Mr. J. S. Baker, Clerk at Inman Yard, from the service of the  
Carrier beginning October 27, 1976, through November 25, 1976.

Carrier shall be required to compensate Mr. J. S. Baker at  
his regular rate of pay for all time lost during the period October 27  
through November 25, 1976.

OPINION OF BOARD: Claimant, J. S. Baker, after investigation, was  
suspended thirty (30) days for tardiness. The in-  
cident which led to this dispute occurred on October 24, 1976. Claimant  
arrived to work 44 minutes past his scheduled 7:00 A.M. reporting time. /

The Organization acknowledges that Claimant was late that day.  
However, it believes that Carrier violated Rule O-1(c) of the Agreement  
by considering tardiness more than 30 days previous to October 24, 1976,  
in determining the penalty to be imposed. It asserts that consideration  
of past offenses amounts to arbitrary, capricious and unreasonable action. 2

RULE C-1(c) states: ~

"(c) No employee will be disciplined for any  
matter of which the Carrier has had knowledge for more  
than thirty (30) days."

There can be no doubt that Claimant is guilty of tardiness. He  
admits as much. His explanation that he overslept is no mitigation in any  
sense of the word. An employee must insure that he reports to work at his  
scheduled reporting time. When Claimant failed to do so, he subjected him-  
self to appropriate disciplinary action. 6,

The final question that remains is the appropriate discipline. It is a well established and a fundamental labor relations principle that the penalty to be assessed, once a violation of a rule or a policy has been established, depends upon many factors. Chief among these, is the seriousness of the proven offense and the employee's prior work history. The seriousness of the proven offense is a consideration because regardless of an employee's work record, certain offenses are thought to be so serious and so unacceptable as to permit a departure from fundamental concepts of progressive discipline. That is, the offense may be so outrageous so as to allow an employer to act in a way that it may not act in so-called "minor" discipline cases.

An employee's work record is also an important consideration in determining the discipline to be meted out so as to determine whether progressive discipline is working. That is, an employee's past record is an important consideration in determining the appropriate penalty. Surely, a first time offender in "minor" discipline matters ought to be treated differently than a repeated offender.

In contrast, an employee's past record is not a proper consideration in dealing with whether the employee is guilty of the offense he is charged with. This is because our system of labor relations rejects the concept that an employee probably committed this offense because he did it previously. Arbitrators and referees reject the theory that an employee has the propensity to commit an offense. See Awards 23188 and 23189.

Thus, here, Carrier was fully warranted - once Claimant's guilt on October 24, 1976, was determined - to examine his past record in order to determine the proper level of discipline to be imposed. The record indicates that Claimant's time and attendance record is wanting. In fact, only two months previous to the time of this discipline, he had been issued a ten (10) day suspension for tardiness. Given this past record, Carrier's imposition of a thirty (30) day discipline cannot be construed as being either arbitrary, capricious or unreasonable.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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. Paulsen*  
Executive Secretary

Dated at Chicago, Illinois, this 19th day of June 1981.