

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23405
Docket Number a-23376

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: { (Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, **Express** and Station **Employees**
{ **Elgin, Joliet and Eastern Railway Company**

STATEMENT OF CLAIM: **Claim of the System Committee** of the Brotherhood
(GL-9279) that:

1. Carrier violated the effective Clerks' agreement when, following **an investigation on July 23, 1979**, it suspended Mr. William Robinson from **Carrier service** for a period of three days, **commencing July 31, 1979**; without just **cause**;

2. **Carrier** shall now **compensate Mr. Robinson for all time** lost as a result of **this** suspension from service and **shall clear his record** of the charge placed against **him**.

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OPINION OF BOARD: **Claimant, Extra Board Clerk, W. Robinson, after investigation, was suspended three (3) days for failing to respond to a call for service. On July 16, 1979, at approximately 7:05 p.m., Claimant was called to perform service on the night turn and there was no answer at his telephone.**

As a preliminary matter, the Organization claims that the discipline imposed should be set aside because Claimant was not afforded 8 full and impartial hearing. It asserts that the Conducting Officer led the testimony of Carrier's principal witness "in a manner clearly intended to place the most adverse inference possible on Claimant," thereby violating Rule 26 of the Agreement. Therefore, it argues that the hearing provided was defective.

As to the merits, the Organization claims that Carrier failed to establish that Claimant is guilty as charged. In its view, the record does not establish that Claimant received 8 call or that he was not home at the time of the alleged call.

In addition, the Organization maintains that, assuming Claimant's guilt is established, the penalty imposed is excessive. It argues that this is Claimant's first offense under Carrier's progressive discipline procedure. Therefore, it contends that 8 three (3) day suspension is premature. The Organization was able to call witnesses to examine them and to cross-examine the witnesses called by Carrier. There is nothing in the record to indicate that the Organization was not able to present 8 full and thorough case. On the contrary, the record discloses that the Organization was able to fully introduce evidence and argument in support of Claimant's position.

Moreover, there is **nothing** in the record to indicate that the Conducting Officer was leading or unduly influencing Carrier's witness. There is also nothing to suggest that Carrier's witness' testimony was affected by the Conducting Officer.

In all, we are convinced that Claimant was afforded a full and impartial hearing.

We will next turn to the question of whether Claimant is guilty as charged. The Organization claims that Claimant was home and available at approximately 7:05 p.m. on the date in question. It asserts that Claimant's telephone did not ring at the time of the alleged call. Carrier's witness, Lucille Halmagy, Assistant Chief Yard Clerk, testified that she called Claimant at least two times at approximately 7:05 p.m. Halmagy stated that the telephone rang but was not answered.

The resulting credibility issue was resolved against Claimant by the Conducting Officer. The record affords no basis for disturbing that determination. After all, the trier of fact has had the advantage of observing the witnesses during their testimonies, and is in a far better position to judge credibility than we are, confronted only with a written record. Absent some evidence of a lack of impartiality, the Conducting Officer's findings shall not be overturned. Here, there is nothing to indicate that the Conducting Officer acted improperly. Therefore, his credibility findings shall be affirmed.

Given the fact that Claimant is guilty as charged, he is subject to appropriate disciplinary action. The evidence establishes that this is Claimant's third offense under the progressive discipline procedure. Claimant was not home when called on July 8, 1979 and refused to accept a call for service on July 10, 1979. He received verbal consultations on both occasions and on July 13, 1979 he received a letter confirming these consultations; all in accordance with the progressive discipline procedure.

The progressive discipline procedure is the system on this property. Claimant had knowledge of it. It is not an unreasonable system. Indeed, consideration of a Claimant's past record in assessing discipline is good industrial practice. Here, such progressive discipline has been systematized. Moreover, the Organization has acquiesced in its use.

Under the progressive discipline procedure, this is Claimant's third offense. As such, he is subject to a three (3) day suspension. Since Claimant was treated in accordance with this procedure, we see no reason to overturn the discipline imposed.

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. Paulsen

Executive Secretary

Dated at Chicago, Illinois, this 6th day of October 1981.