

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23851
Docket Number NW-23904

John B. LaRocco, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Denver and Rio Grande Western Railroad Company

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

(1) The suspension of twenty-one (21) days imposed on Section Laborers R. D. Porco, K. D. Armenta and R.L. Guccione for 'allegedly failing to attend to their duties' was capricious, arbitrary and based upon unproven and disproven charges (System Files D-58-79, D-59-79 and D-60-79).

(2) The claimants shall have their records cleared of the charge placed against them and they shall be compensated for all wage loss suffered."

OPINION OF BOARD: This case is the consideration of claims brought by three Section Laborers stationed at Salida, Colorado in the Track Subdepartment. The Carrier charged the Claimants with failure to attend their duties at 3:40 p.m. on Friday, November 9, 1979. As the result of an investigation held on November 15, 1979, each Claimant was assessed a 21 day suspension.

Claimants are regularly assigned to the 7:30 a.m. to 4:00 p.m. shift. On November 9, 1979, Claimants' Foreman was absent in the afternoon but before leaving he instructed the Claimants to spend the remainder of their shift cleaning crossings and cleaning and oiling switches in and near the yard. About twenty minutes before the conclusion of their shift, the Roadmaster observed the Claimants sitting in the Old Roadmaster's Office.

According to the Organization, each Claimant had a legitimate reason for his presence in the Office. Claimant Porco was allegedly trying to order a speaker for the crew's truck. Claimant Guccione had just driven Claimant Porco back to the yard after leaving the truck at a local service center. Claimant Armenta wanted to obtain a switch key to oilswitches which they had previously cleaned. The Carrier contends all three Claimants should have been outside working in the yard pursuant to their Foreman's directive rather than wasting valuable time waiting for the expiration of their shift.

At the time of the incident, Claimants were not working in the yard which was contrary to their Foreman's instructions. We realize that the Claimants were working without their immediate supervisor and, at times, they had to resort to their own judgment as to how to perform their assigned tasks.

On November 9, 1979, the crew's truck developed mechanical problems so it was reasonable for the Claimants to make sure the truck received the **necessary** service and was left at the shop for further repairs. However, once they returned to the yard, they should have resumed their work on the switches. **The** fact that the Roadmaster found all three Claimants in the Office at precisely the same time was too coincidental. None of the Claimants' excuses effectively explain this coincidence. Therefore, the Carrier has submitted sufficient evidence to demonstrate that Claimants committed the charged infraction.

The next issue is whether the penalty was **commensurate** with the proven offense. In this case, the Claimants have accumulated **many years** of satisfactory performance. On the day in question, the Claimants completed virtually all their **assigned duties**. Since the offense was relatively minor, a 21 day suspension was excessive and unduly harsh. Under the circumstances, a seven calendar **day** suspension would be the maximum reasonable penalty the Carrier could assess and, **thus**, we will reduce the suspension from 21 days to seven **calendar days**. Each Claimant shall be compensated **for work days within the fourteen calendar days** at the rate of pay in effect when they served the suspension.

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**

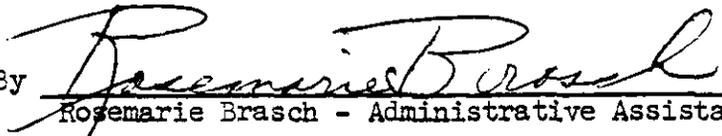
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By **Order** of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this **28th** day of **April 1982**.

