

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24158
Docket Number MW-2377

Robert E. Peterson, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

(1) The dismissal of Foreman P. F. Young on March 21, 1979 for allegedly 'falsifying timesheets for March 7, 1979' was without just and sufficient cause and wholly disproportionate to the charge (System File C#54/D-2294).

(2) The dismissal of Foreman P.F. Young on March 28, 1979 for alleged 'insubordination on March 14, 1979' was without just and sufficient cause and on the basis of unproven and disproven charges (System File C#55/D-2294).

(3) Foreman P. F. Young shall be afforded the remedy prescribed in Rule 18(e)."

OPINION OF BOARD: There are actually two separate cases here for the Board's determination. It must first decide whether Carrier's action in discharging Claimant for having allegedly falsified timesheets for March 7, 1979 was with or without just and sufficient cause, and then, if the Board's answer is in the negative, whether Carrier's dismissal of Claimant for alleged insubordination on March 14, 1979, in a totally unrelated situation, was without just and sufficient cause.

&respect to Claimant's dismissal for the alleged falsification of timesheets, according to Carrier's Roadmaster, Claimant's immediate supervisor, after he had arrived at Carrier's Davenport freight house at approximately 12:30 P.M. on March 7, 1979, he observed a company truck assigned to Claimant at the freight house at about 12:45 P.M. with a Section Laborer who was supposed to be working with Claimant alone in the truck. The Roadmaster state that upon inquiry of the Laborer as to where his Section Foreman (Claimant) was, that the Laborer told him that Claimant had gone home sick and had told him to go back to the freight house and find something to do. The Roadmaster also states that at approximately 3:00 P.M. that same date, while he was in the company of an Assistant Manager of Maintenance for a Carrier subsidiary, he drove to where the Laborer was then working, a few blocks from the freight house, and in the presence of the other Carrier official, again asked the Laborer where Claimant had gone. According to the Roadmaster, the Laborer "again told me that Mr. Young had gone home early approximately 12 noon sick." The second Carrier official, asked whether he recalled the Laborer's response to the Roadmaster, said: "Yes, he said Mr. Young went home sick." Thereafter, the Roadmaster submits, when he was going over weekly timesheets on March 14, 1979, he "noticed that Mr. Young had put in eight hours for himself on March 7, 1979, (and) on March 21, 1979 at 1:41 P.M. (he) dismissed Mr. Young

for falsifying his timesheet for Wednesday, March 7, 1979."

It is undisputed that when Claimant did in fact submit a timesheet or request for payment for time worked for the period March 1 through March 7, 1979, that he did show a full eight hours as time worked on March 7, 1979. The record also shows that Claimant did not report for work, but called in sick on March 7, 1979, and that he had shown himself as being off sick on those two dates on timesheets submitted for the period March 8 through March 15, 1979.

At a hearing accorded Claimant on April 9, 1979, he maintained that he had worked a full eight hours on March 7, 1979; he was performing work at various locations in the Davenport area; he had not told the Laborer he was going home sick; and, he had given the Laborer specific work to perform while he went to perform other work. The Laborer was present at the hearing as a witness for the Carrier, and after the Laborer had testified a part of Claimant's defense came to be allegations that testimony of the Laborer did not substantiate testimony of the two Carrier officials as to what the Laborer had reportedly stated to them on March 7, 1979. In this regard, it is noted that the Laborer, when asked if in fact he did tell the Roadmaster that Claimant had gone home sick, replied: "As I said because I said it real fast, a fast answer and wasn't thinking at that time. I know he went so I figured he went home, that is all." The Laborer did, however, subsequently admit that he had told the Roadmaster that Claimant had gone home sick, and that he recalled the Roadmaster having asked him the question twice. However, there appears to be a discrepancy as to the time Claimant had left the Laborer on his own. Here, we note Claimant states that he and his Laborer ate lunch in the company truck in the parking lot of a store between 12:20 P.M. and 1:00 P.M.; he was not feeling well at the time and took some aspirins; that after lunch, while en route to Mt. Joy, they received a call at about 1:30 P.M. concerning some trees down in the vicinity of Kirkwood Boulevard; they did some work at Mt. Joy at about 2:30 P.M.; and he "let Mr. Myers (the Laborer) out at Gaines Street to drain switches...between 3 and 3:30 probably closer to 3:30." The Laborer attests to having had lunch with Claimant in the parking lot and being with him until "about 3 o'clock" when, according to the Laborer, Claimant "left the premises but he did not go home like I said...I just gave a fast answer." This also as opposed to the contentions of the Roadmaster that the Laborer had told him twice that the Claimant had gone home at approximately 12 noon on the day in question.

Further discrepancies appear in the record as relates to the operation of the company truck on March 7, 1979. It is the Claimant's testimony that he had the truck all day. He maintains that after he dropped the Claimant off at Gaines Street he spent the rest of the afternoon checking out the trees-down report on Kirkwood Boulevard, washouts on the northside of a bridge toward East Locust Street, inspecting the Government Bridge pump station, and making reports of potholes on Iowa Street, before going back to the freight house to check that the Laborer had locked the door and then driving home in the company truck. The Claimant asserts that the Laborer did not have the truck, and the Laborer alleges that he did not have the truck at all that day. Conversely, it is the Roadmaster's testimony that he not only observed the Laborer drive up to the freight house at 12:45 P.M. (when Claimant says they were at lunch), but that

he had in fact spoken to the Laborer at that time. And, it is the testimony of the two Carrier officials that they saw the company truck parked at 3:00 P.M. in the vicinity of Gaines Street Yard when they were talking to the Laborer, and he had advised them Claimant had gone home sick. The Board also notes that the Roadmaster maintains that when he last saw the company truck the Laborer was driving it at approximately 4:10 to 4:15 P.M.

We have given careful study to the conflicts in testimony, the total transcript and the extensive arguments presented by both parties and, on balance, we are of the opinion that there is sufficient evidence to substantiate the Carrier's action in finding Claimant guilty as charged of falsifying timesheets for March 7, 1979. However, we do not believe that the discharge penalty was justified. There is no doubt that the offense for which Claimant was charged is a transgression where the penalty of discharge is held to be proper under a number of circumstances. At the same time, as in the instant case, given all the facts of record, lesser measures of corrective discipline, short of dismissal, are to be considered proper so as to impress upon an employee that a repetition of such conduct will not be tolerated. In this regard, we note the Carrier has argued that its decision was based upon Claimant reportedly having a past record "which clearly indicates a poor general work attitude, and a prior incident involving falsification of timesheets." The Carrier has not, however, presented anything of record to substantiate its contentions and the Organization, in defense of Claimant, states in its rebuttal submissions: "The Carrier did not present any evidence whatsoever that such alleged incidents were the subject of any investigation." Furthermore, as concerns Claimant's past record, we note he has 46 years of service, the last 38 as a foreman. Certainly, while it was foolish of him to have placed his job and future employment in jeopardy by taking an unauthorized "early quit", even if he had been sick, his total record of service does not show him to be an incorrigible employee.

The Board having determined that the penalty of discharge was unreasonable and excessive as concerns the first case before us, it is necessary we therefore direct attention to Claimant's discharge for the second incident.

The Claimant's dismissal in this second case stems from charges by the Carrier's Roadmaster that on March 14, 1979 he had given Claimant specific instructions to drill holes and install bolts in three pieces of rail and that Claimant had not followed his directive as concerned one of the three rails.

On April 12, 1979, a formal hearing was held relative to Carrier's determination that Claimant was guilty of insubordination when he failed to comply with his supervisor's instructions. At the hearing the Roadmaster testified, in principal part, as follows:

"On March 14, 1979, I was in Davenport. I arrived at Nahant Yard at approximately 2:30 P.M. Mr. P.F. Young (Claimant) and Section Laborer Myers were changing a broken rail on the east end of the yard on the lead. At this time about east of where they were working I walked over and discovered that three rails had been changed out. Each of the three rails had only 1 bolt hole with 1 bolt in each end of the rail. I walked back...and I instructed Mr. Young to drill the remainder of the holes and install the missing bolts in these 3 rails before quitting for

the day even if it meant working this job on overtime. Mr. D. T. Myers was present and witnessed my instructions to Mr. Young. Mr. Young told me that he would do this before quitting. On March 27, 1979, I...discovered that 1 of the 3 rail that Mr. Young had been instructed to drill and install bolts in had not been done...In reviewing Mr. Young's timesheet. Form PR 1, Mr. Young showed one hour overtime for himself for drilling holes in rails, this being March 14, 1979...I took these polaroid photographs at the location in the rail that was not repaired... I showed these photographs to Section Laborer Myers and he agreed that this was one of the rails that Mr. Young was instructed to repair...When I returned to Savanna on March 28, 1979, I sent Mr. Young a letter terminating his employment relationship with the Carrier for insubordination for not carrying out my instructions of March 14, 1979."

It is to be noted that under the applicable Rules Agreement after an employe has been notified he has been disciplined for an offense or incident he may request a hearing regarding such determination by the Carrier.

'The Section Laborer was called as a witness by the Carrier immediately after the Roadmaster had completed his testimony and examination. Asked by the hearing officer whether everything the Roadmaster stated in his statement was true to the best of his knowledge, the Laborer responded:

Well we drilled that very same night because the holes that he has in the picture are not the holes that we changed. How I know is because I walked down on the track 2 or 3 times to make sure."

Upon further questioning or examination, the Laborer did acknowledge that he understood the Roadmaster to have instructed them to drill holes and install bolts in rail other than that on which they were working at the time the instructions were given. This, notwithstanding the fact that the Laborer maintained they had worked that night in drilling holes and installing bolts in the rail they were working at the time. Asked whether he could recall why the work they had been instructed to do had not been done, the Laborer said:

Well, I tell you they had derailed some cars up at the east end of the yard and we went up to check that derailment out and to try to fix it and all the while just one man and the boss (Mr. Young and I) and we could just do so much for that short of time."

It is the Claimant's testimony that he had not received any orders from the Roadmaster to drill and install bolts in the rail in question. He submits they did, however, drill holes and install bolts in the rail that both he and the Laborer were working on when he had a conversation with the Roadmaster.

Claimant can recall having discussed a number of matters related to track conditions in the area with the Roadmaster; that he was going to have to raise a switch that was out of surface; and, directing the Roadmaster to look at a crossover that Claimant had found to be in need of having one of its switch points changed out. The Claimant maintains he completed those tasks and also worked one hour overtime drilling holes and installing bolts in the rail he was working on that particular day. This hour, Claimant submits, includes loading tools, driving from Nahant Yard to Davenport headquarters, unloading the tools and locking up.

It is Carrier's position that a supervisor must be allowed to properly instruct those employees under his jurisdiction in order to achieve and to meet specific operational demands. It asserts it would be inconceivable to expect the Carrier to meet the necessary operational requirements for service if its supervisors did not have vested authority to properly instruct and discipline employees working under their jurisdiction.

As with the first case, despite the conflicts in testimony, on balance, we believe the record supports the Carrier's findings that Claimant had failed to follow his supervisor's instructions. Again, however, we do not find the incident itself, even when viewed in consideration of discipline attached for the first incident, that there was cause to impose a penalty of dismissal from service. Certainly, all employees have an obligation and responsibility to honestly and faithfully listen to and follow the directive of supervisory officials. It is a necessary requisite of the employee-employer relationship. And, when there is a failure to obey orders or instructions then certainly the employer has recourse to discipline to seek to correct the conduct of an employee, but the exercise of this discretion must be exercised in a manner related to the degree of the offense. Here, we are unable to comprehend the basis for the ultimate penalty of discharge from service, except as the carrier might have been motivated to such a decision on the basis of its decision in the first case.

We believe the time Claimant will have served up to the date of this Award will be sufficient penalty for both offenses. Accordingly, Claimant is restored to service with seniority unimpaired, but without compensation for time held out of service.

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 Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Ad, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the **discipline** was **excessive**.

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 15th day of February 1983.

