

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24167
Docket Number MW-24332

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Chesapeake and Ohio Railway Company
(Southern Region)

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

(1) The suspension of thirty (30) working days imposed upon Foreman R. L. Caldwell and the 'overhead suspension' of ten (10) days imposed upon Assistant Foreman R. E. Evans for alleged 'falsification of time sheets on May 27 and 28, 1980' was without just and sufficient cause and on the basis of unproven charges (System File C-D-970/MG-2849 & MG-2850).

(2) The claimants' respective records shall be cleared of the charge leveled against them and they shall be compensated for all wage loss suffered, including overtime pay."

OPINION OF BOARD: The Carrier notified the Employees to attend an Investigation for falsification of time sheets on two (2) designated days in May of 1980. Subsequent to the Investigation, the Carrier determined that the Claimants were both guilty of the offenses and the Foreman was assessed thirty (30) working days' actual suspension and the Assistant Foreman was assessed a discipline of ten (10) days' "overhead suspension."

The evidence demonstrates that the Foreman, at 11:00 a.m. on May 27, left his assignment for the rest of the day and he placed the Assistant Foreman in charge. On the second day, the Assistant Foreman left his assignment prior to 10:00 a.m., and did not perform any more service on that date. The Employees failed to advise the Time Keeper to make any changes in the time sheets to reflect their early departure on the days in question and they both received eleven (11) hours of pay for both days.

We have considered the contentions of the Employees concerning ultimate responsibility in this case but we are unable to find that their testimony alters the facts as we understand them and that they took action which was directly contrary to the best interests of the Company. Their actions resulted in the receipt of payment for time when they were not actually at work. We have also noted that the more significant penalty was given to the Foreman because of his greater responsibility.

Under all of the circumstances however we question that the significant difference in the amount of discipline imposed was warranted and accordingly we will reduce the suspension imposed upon Foreman R. L. Caldwell to fifteen (15) working days but we will allow the "overhead suspension" of ten (10) days imposed upon Assistant Foreman Evans to remain in effect.

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 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.