

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24188
Docket Number CL-24331

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
[Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9541)
that:

1. Carrier violated the terms of the current Agreement, particularly Rule 21, when it assessed an actual thirty (30) day suspension on Mr. Tallie Stroud account **formal** investigation which **commenced** on March 26, 1980, and after a recess, was **concluded** on April 2, 1980; and

2. Carrier shall be required to compensate Mr. Tallie Stroud for all monetary losses account serving the actual thirty (30) day suspension **commencing** April 9, 1980, and his record cleared of the charges preferred against **him**.

OPINION OF BOARD: On March 17, 1980, Carrier **served** notice on Claimant Tallie Stroud to attend an investigation on March 18, 1980, concerning following charge:

"... your responsibility in **connection** with your failure to promptly and properly follow instructions. Specifically, your failure to report to your designated work area until 5:35 P.M. after being instructed to do so at 4:20 P.M. by Mr. **T. Mason**, Supervisor, Piggyback Operations, while you were assigned to Position 698, Piggyback Clerk, **commencing** at 4:00 P.M. March 13, 1980."

Hearing on above **notice** was postponed by mutual consent until March 26, 1980, and, after starting **as** scheduled, was recessed until April 2, 1980, to afford **Claimant** opportunity to secure witnesses.

On April 8, 1980, Carrier issued a Discipline **Notice** to **Claimant**, assessing thirty (30) days suspension. The Claimant appealed the disciplinary action under date of June 24, 1980. Such appeal was progressed properly under prescribed **Agreement** Rules and was referred to this **Board** for review and decision. At no **time** did the Union assert that Claimant was denied a fair and impartial investigation, as required by Rule No. 21 of the Agreement.

The Board agrees with the Employees' reply to Carrier's Ex **Parte Submission** that this entire case involves disputes over time factors, **i.e.**, when Claimant was **instructed** to report as a trucker and when he actually reported for such duty. Extensive review of the testimony of various witnesses at the hearing reveals the following:

Claimant was assigned as relief piggyback clerk on March 13, 1980, going on duty at 4:00 P.M. with duties including miscellaneous clerical and filing work. At 4:10, Claimant was seen by Supervisor Mason at the desk preparing to file. At this time, Claimant was instructed by the Supervisor that he was needed for work outside and to change clothing accordingly. Supervisor Mason testified that he was certain such instructions were given Claimant at 4:10 P.M. Earlier, however, Supervisor Mason, stated the time to be approximately 4:20 P.M.

At approximately 4:30 P.M. Supervisor Mason met Mr. Weaver, another Supervisor near the office and informed him that he (Mason) had instructed the Claimant to change his clothes and work outside. Mr. Weaver stated Mason had given such instructions to the claimant at 4:20-4:25. The time required to change clothes usually allowed is 15 minutes and, 30 minutes for such action "would be stretching it", according to Mr. Weaver. It was reported by Mr. Richardson, Foreman that Claimant joined the machine and tiedown men at 5:35 P.M. Mt. Richardson also testified that he saw Claimant in dressing room not later than 4:30 P.M. changing clothes at which time Richardson told him to go to Track 3. At that time Claimant advised Richardson he had been advised by Supervisor Mason a few minutes earlier to change clothes and work outside.

At 5:35 P.M., the packer operator Kickburg, reported to Mr. Richardson that the man who was to roll legs (Claimant) had not reported yet. It was during this conversation that Claimant was seen walking toward the work area to which he was assigned.

During Claimant's lunch break at 7-7:30 P.M. he was asked by Supervisor Weaver why he had taken so long in reporting for his outside job. Claimant replied he had not been told of the assignment by Supervisor Mason until 4:30-4:35. This in contrast to the information given to Weaver by Mason who advised he had told Claimant of the outside assignment at 4:20. At the time of this conversation, Claimant did not take exception to the fact he did not report for the outside job until 5:35.

All of the above times were established during the hearing by separate testimony of Supervisors Mason and Weaver and also Foreman Richardson. The Claimant also testified at the hearing and had a witness who testified in Claimant's behalf.

Claimant's basic testimony was that he was instructed by Mr. Mason at 4:50 to change clothes and work outside; that he took 15-20 minutes to change and came out of the locker room at 5:15-5:20. He said it took some 5 or 10 minutes to walk from the locker room to his assigned work area. Claimant's testimony is somewhat in conflict with Mt. Richardson's testimony when he saw Claimant changing clothes in the dressing room at 4:30.

The testimony of Jeff Dennis, witness for the Claimant was somewhat indefinite. He testified to being a trainee at the desk near the Claimant and overhearing instructions given by Supervisor Mason to Claimant to change clothes and work outside. He put the time of such instructions at approximately 4:30 and disputed that it could have been as early as 4:10. He admitted that he did not remember anything specifically.

The Local Chairman of the Brotherhood participated in the hearing by questioning various witnesses.

The above detailed **summary** of the testimony shows substantial corroboration of evidence adduced by the Carrier. Such evidence covers the period from shortly after **4:00** P.M. through the time Claimant was instructed to change clothes for work outside, to the time he was witnessed in the locker room at **4:30**, at **5:35** when he was seen approaching his outside work area, and finally to **7:00** during his **lunch** break when he was questioned by his Supervisor why he had taken so long to report for his outside job.

Claimant's testimony that he did not receive instructions from Supervisor Mason to work outside **until 4:50** is unsupported by any corroboration. Actually, his **own** witness puts the **time** of such instruction at about **4:30**, not **4:50** as alleged by Claimant.

Taking all the testimony into account it would **appear** most reasonable that Supervisor Mason instructed Claimant at sometime between **4:10** and **4:30**. Allowing **some 15-20** minutes for clothes change as testified by Claimant would still leave **some 40** minutes of time **unaccounted** for by Claimant before he reported to the work area of his outside job at **5:35**. That he had taken an unduly long period was a matter of concern by the pack operator whose work was affected. It was because of this that Supervisor Weaver questioned the Claimant during his **lunch** break.

In view of the above **review** of evidence, upon which the disciplinary action of suspension was based, the Board cannot agree with Brotherhood's contention that Carrier failed to establish the record of time used by Claimant to comply with instructions to report for outside work. Carrier evidence of the times of the various events is substantially corroborated **in a** number of ways whereas Claimant's testimony is not **only** uncorroborated but actually brought into **question** by his own **witness**. The record supports **a** finding that Carrier's **action in** suspending Claimant was based on substantial and credible evidence.

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: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of February 1983.

