

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24.543
Docket Number MW-24725

Paul C. Carter, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Missouri-Kansas-Texas Railroad Company

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

(1) The dismissal of Pile Driver Foreman C. M. Reinsch for alleged violation of Rules 'J' and 'M' was without just and sufficient cause (System File 600-207/2579).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was employed as Foreman, Pile Driver Gang No. 742. On May 5, 1981, he was notified by the Division Engineer to report for formal hearing to begin at 8:00 A.M., May 14, 1981:

"... to be held to develop the facts and determine your responsibility, if any, in connection with falsification of payroll records. last half April, 1981, and your absence from duty on or about April 30, 1981 from 11:30 A.M. to 12:00 noon, from 12:30 P.M. to 1:00 P.M., and from 5:00 P.M. to 5:30 P.M. as well as various other times.

In this formal hearing you will be charged with violation of Rules J and M, parts quoted, of M-K-T Lines, 'Rules for the Maintenance of Way and Structures'. effective January 1, 1981, which read as follows:

Rule J. (Part reading) 'Employees must not be:
4. Dishonest...'

Rule M. (Part reading) 'Employees must report at the appointed time, devote themselves exclusively to their duties, must not absent themselves, nor exchange duties with or substitute others in their place without proper authority...'

Please be present at the above mentioned time and place. YOU may have representation and any such witnesses you may desire to appear in your behalf."

The hearing was held as scheduled. Claimant chose to represent himself in the hearing, which was conducted by Carrier's Terminal Superintendent. On May 22, 1981, claimant was notified by Carrier's Assistant Vice President-Maintenance of Way of his dismissal from service.

In its submission to the Board the Organization contends that the charge against claimant was not precise as required by Rule 1, Article 23, of the Agreement. In the investigation the only contention that claimant made concerning the charge "as that he considered it improper to be charged with violation of more than one rule in the same investigation. There is no proper basis for such objection as made by the claimant. It is well settled that if exceptions are to be taken concerning the letter of charge, or the manner in which the investigation is conducted, such exceptions must be taken prior to or during the course of the investigation; otherwise they are deemed waived. In the appeal of the dispute on the property the General Chairman complained of issues being introduced in the hearing that he considered not covered by the letter of charge. Such complaint, on appeal, came too late to be properly considered. In its submission to the Board the Organization also complains that the decision following the investigation "as not made by the conducting officer. The record shows that no such contention "as made in the handling of the dispute on the property, and issues or defenses may not be raised for the first time before the board. This principle is so well settled as to require no citation.

Based upon the record, the board finds that substantial evidence "as adduced at the hearing in support of the charges against the claimant, and that claimant failed to properly perform his duties as foreman. The claim will be denied.

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

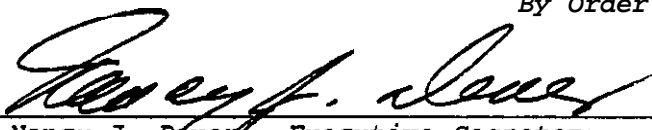
That the Agreement "as not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Devey - Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1983

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