

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24697
Docket Number MW-24708

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation (former
(Penn Central Transportation Company

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

(1) The ten (10) days of suspension imposed upon Mr. R. C. Clayton for "Leaving the job on July 21, 1980, at 11:00 a.m., at Blairsville Secondary, Mile Post 7, without the permission of W. Ribet or J. Caporali" was arbitrary, capricious, unwarranted and without just and sufficient cause (System Docket No. 621).

(2) The claimant's record shall be cleared and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: An investigation was held on August 8, 1980 to determine whether Claimant, a spike operator, assigned to District Gang 8 impermissibly left Carrier's property at 11:00 A.M. on July 21, 1980, the time his scheduled lunch break began and returned late to his work location. His lunch break extended to 11:20 A.M. but he returned at 1:00 P.M. Based on the investigative record, he was assessed a thirty (30) day suspension which was later reduced to ten (10) days. This disposition was further appealed.

In defense of his petition, Claimant contends that he properly left Company property during his lunch break, since he asserts there is no rule, regulation or practice which necessitates that he receive prior approval from his supervisor. He argues that he and several other employees in District Gang 8 secured permission from Foreman J. Ricciardi to go to a nearby restaurant to obtain a meal since either their lunches spoiled because of the excessive heat that day or they were separated from their lunches when they were split into several work groups. He maintains that he was unfairly singled out for disciplinary punishment when Carrier did not proffer charges against the other employees who returned late to their assignments, or like himself also obtained permission from Foreman Ricciardi to leave the property.

Carrier contends that the penalty imposed was neither unreasonable nor inconsistent with the record evidence since it had been indisputably established at the trial that Claimant left Company property without securing permission from either Assistant Supervisor W. Ribet or Assistant Supervisor of Production J. Caporali. It asserts that despite being entitled to only a twenty (20) minute lunch break which would have ended at 11:20 A.M., Claimant returned to his assignment at 1:00 P.M. It argues that his lateness and indifference to procedures warranted the discipline imposed and avers that it properly comported with the requirements of due process.

In our review of this case, we concur with Carrier that Claimant was late in returning to his assignment, but disagree that he purposely left the property without securing supervisory approval. This is not to imply that we disagree with Carrier's averment that permission is needed to leave the property, only that the testimony of Foreman Ricciardi indicates that he was under the impression employees could leave during their lunch break. Moreover, we have no explicit evidence that Supervisors Ribert and Caporali were readily available to grant such permission or that Claimant believed that he improperly left the property. We believe that he thought it was permissible when the other employees, who did secure Foreman Ricciardi's acquiescence left the property. More importantly, however, we feel that while Carrier has the inherent right to discipline employees for acts of misconduct or identifiable rule violations, we also feel that employees should not be randomly disciplined when the net of culpability covers others. There were no plausible reasons why Carrier should have excluded the other employees of District Gang 8 from disciplinary investigation or special compelling reasons why Claimant should be charged. As a rule we would be extremely hesitant to modify or reverse a disciplinary determination when the evidence strongly supports a guilty finding, but we would be judicially remiss if we permitted this inequity to exist, where other employees were presumptively guilty of the same offense. It would be imprudent and unfair to hold him responsible for a collective offense. It is patently disparate treatment. We will sustain the claim.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover-Executive Secretary

Dated at Chicago, Illinois this 24th day of February, 1984