

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Carter, Referee

Award Number 24727
Docket Number MW-25023

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Atlanta and West Point Railroad Company

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

(1) The dismissal of Machine Operator L. Hudson for alleged violation of 'General Rule 17' was without just and sufficient cause (System File 37-AWP-82-4/12-39(82-1020) K3).

(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, with about five years of service, was employed by the Carrier as a backhoe operator. Under ordinary circumstances, claimant would prepare his own time sheet at the end of each half-month period, submit it to a Supervisor where it would be approved, if correct, forwarded to the Division Accountant who in turn would progress it to the Payroll Department.

The Division Accountant did not receive a time sheet from claimant for the second half of December, 1981. The claimant was then asked to telephone his time to the Division Accountant. The claimant called the Division Accountant on January 4, 1982, and, according to the Carrier, stated that he worked and should be paid for 80 hours straight time, 10-1/2 hours overtime, and 16 hours holiday pay, broken down:

December 16 - 8 hours straight time
December 17 - 8 hours straight time
December 18 - 8 hours straight time
December 19 - 8 hours overtime
December 21 - 8 hours straight time
December 22 - 8 hours straight time
December 23 - 8 hours straight time
December 24 - 8 hours holiday pay
December 25 - 8 hours holiday pay
December 29 - 8 hours straight time; 2½ hours overtime
December 30 - 8 hours straight time
December 31 - 8 hours straight time

The Carrier states that it was later determined that claimant had claimed time for December 16, 17, 18, 19, 22 and 23, when he did not work, as well as eight hours holiday pay for each date of December 24 and 25, for which he was not qualified. The Carrier also states that 8 hours overtime was erroneously claimed for December 19, and should have been six hours overtime on December 20, 1981.

On January 7, 1982, claimant was charged by the Division Engineer:

"It has been brought to my attention on January 7, 1982, that you had furnished the Division Accountant of the Georgia Group with information that created falsification of your payroll for the last half of December, 1981.

This is a violation of the Safety Rules of the Atlanta and West Point Railroad, the Western Railway of Alabama, and Georgia Railroad, more particularly General Rule 17 which reads in part: '... dishonesty . . . which subjects the offender to dismissal...."

In order to establish the facts and place responsibility, if any, we are scheduling a formal hearing January 15, 1982 at 10:00 A.M., which will be conducted at the Georgia Railroad General Office Building, at 1590 Marietta Blvd., NW, Atlanta, Georgia.

You may have present at this hearing any witnesses who have pertinent information regarding **this** charge and a representative of your labor organization by your own arrangement.

Your personal record will be reviewed at this hearing."

The hearing was postponed and conducted on January 21, 1982, following which claimant was notified of his dismissal from service on January 25, 1982. A copy of the transcript of the hearing has been made a part of the record. The hearing was conducted in a fair and impartial manner, and none of claimant's substantive procedural rights was violated.

There was substantial evidence in the hearing, including claimant's statement, that claimant did report time to the Division Accountant on January 4, 1982, as previously outlined. Claimant also testified that he did not work on December 16, 17, 18, 22, 23. **The** claimant also testified that he thought that his time sheet had been mailed in the usual manner by a relative, but it had not been mailed. There was **some** contention **in the** investigation by claimant that he thought that the time reported but not worked could be counted toward his vacation for the year 1982. This appears to the Board to have been after-thought on the part of the claimant. He had been in service long enough to be familiar with the handling of vacations and payments therefor. He admitted that he said nothing **to** the Division Accountant, when he called in the time, about claiming 1982 vacation time, which would have been entirely improper in any event.

The Carrier considered claimant's actions as constituting dishonesty. We, at the Board level, are not in a position to say that such a conclusion by the Carrier was not justified or unwarranted. Considering the amount of time involved, we cannot believe that claimant's actions resulted from a **simple** mistake or oversight. The Board has issued numerous awards upholding the dismissal of **employees** for dishonesty or attempts to defraud. Further, when an **employee** prepares his own timesheet, or presents his own time in any manner, a matter of trust is involved, and all possible care should be taken to see that the time is accurately reported. See Award No. 24295.

The temptation to reduce the discipline imposed in this case is strong; however, the only reason for doing so would be on the basis of leniency, which addresses itself to the Carrier and not to this Board. 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

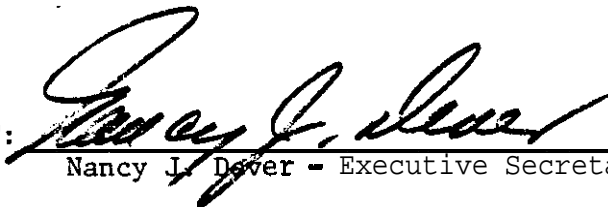
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March, 1984.