

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hyman Cohen, Referee

Award Number 24917
Docket Number MW-24950

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Southern Pacific Transportation Company
(Eastern Lines)

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

(1) The suspension of Welder Foreman T. J. Cox from February 2, 1982 through February 15, 1982 for alleged violation of "Rule 801" was arbitrary, capricious, unwarranted and on the basis of unproven charges (System File MW-82-88/346-66-A).

(2) The claimant's record shall be cleared of the charge leveled against him and he shall be allowed eighty (80) hours of pay at his straight time rate because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: The Claimant is employed as a Welder Foreman at the Carrier's rail welding plant in Houston, Texas. He was suspended for ten (10) days for violation of Rule 801 because he falsified his time roll for overtime on January 16, 1982 and January 23, 1982, dates on which he did not work.

The Claimant acknowledges that he placed time for which he did not work on his time roll for January 16, 1982 and January 23, 1982 because of his understanding from a "July 1981 meeting" that if he was contractually entitled to overtime he was permitted to place it on his time roll even though he did not work such overtime.

It may very well be that the Claimant did not intend to be dishonest or wilfully disobedient to the Carrier's rules. In this connection, Rule 801 provides, in relevant part:

"Employees will not be retained in the service who are *** dishonest ***."

By itself, placement of time not worked by the Claimant on his time roll creates a strong inference of dishonesty. As stated in Second Division Award No. 7817:

"Claim for pay for time not worked and not otherwise compensable is a serious matter going to the heart of the employment relationship. If the claim for pay was simply a mistake, the employee making the error must be prepared to offer proof and logical reasons for the error; otherwise any false claim upon its discovery could be defended by claiming 'mistake'. ***"

In the instant case the Claimant relies upon a vague "understanding" at a "July 1981 meeting" for justification in placing time on his time roll for days on which he did not work. The Board cannot conclude that credible proof was offered by the Claimant to justify the "understanding" or mistake. As a result, the Board concludes that the claim should be denied. Moreover, in light of the seriousness of the offense committed by the Claimant, the Board cannot conclude that the penalty of the suspension for ten (10) days is excessive.

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

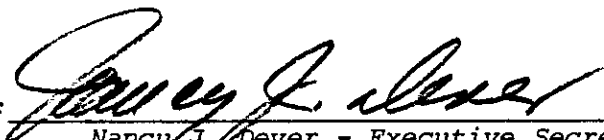
That the Agreement was not violated.

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 July 1984.