4857

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25005
Docket Number MW-25128

Thomas F. Carey, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Chesapeake and Ohio Railway Company

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

(1) The disciplinary demotion of Foreman James Revely, Jr. and the thirty (30) days of suspension imposed upon him was excessive and unwarranted (System File C-D-1232-A-B-C-D/MC-3382-3-4-5).

(2) Two (2) of the investigations held on November 6, 1981 were not held as required by Rule 21(a)(l).

(3) For the reasons set forth in either or both (1) and (2) above, the claimant shall be reinstated as a foreman with seniority as such unimpaired and he shall be compensated for all "age loss suffered."

OPINION OF BOARD: The Claimant, Mr. J. Revely, Jr. was employed by The Chesapeake and Ohio Railway Company, for eleven years. He "as Production Gang Foreman assigned to Tie Force Unit 1263 when the incidents involved here occurred.

As part of the supervisory duties of Production Gang Foreman of force 1263, Mr. Revely "as required to complete and submit timesheets for the men working under his jurisdiction. The actual number of hours worked by each member of the force were to be accurately reflected on the timesheets.

To ensure that timesheets can be picked up, approved by the Supervisors and forwarded to Baltimore, Maryland in a timely manner, it is practice to have the various foremen prepare and submit weekly time sheets on Thursdays. This practice facilitated the time issuance of pay checks. These timesheets represent one full week of work, and it must be assumed that the employes will work a full day Friday unless otherwise notified.

On October 26, 1981, the Claimant received four (4) individual notices to appear for four (4) separate investigations at Richmond, Virginia, charging him with falsifying timesheets'of Force 1263. The investigation held that:

(1) On October 16, 1981, Mr. Revely submitted a signed timesheet for Mr. John Morning, a member of the Force, showing that he had worked 8 hours when, in fact he had not worked at all on this date.

(2) On October 16, 1981, Mr. Revely's Force did not work a full 8 hours (they were released at 1:30 p.m.) even though their timesheets indicated that each man had worked and "as to be paid for 8 hours.

(3) On October 22, 1981, Mr. Revely was granted time off duty, yet his timesheet covering this date indicated he worked 8 hours straight-time and 1 hour overtime.

(4) On October 23, 1981, Mr. Revely released his men from duty at approximately 10:30 a.m., but the timesheets indicated that each man had worked a full 8-hour day.

There is sufficient grounds in record to deny claim, not the least of which are the several admissions against interest of the Claimant himself.

In Award 13179 (Dorsey) we said:

"In discipline cases, the board sits as an appellate forum. As such, our function is confined to determining whether: (1) Claimant was afforded a fair and impartial hearing; (2) the finding of guilty as charged is supported by the substantial evidence; and (3) the discipline imposed is reasonable."

After a careful review of the transcripts of the investigation, we are unable to sustain Petitioner's objection that the hearing was not fair and not impartial. Claimant was, after all, afforded every opportunity to present his version of the facts, vigorously represented by the Organization, and allotted ample time to cross-examine any adverse witness. Furthermore, the hearing was fairly and properly conducted in accordance with the Rules and without any denial of Claimant's rights of due process.

The principle has been well established that we will not disturb Carrier's decision on guilt or the discipline imposed where it is supported by substantial probative evidence and Carrier has not acted arbitrarily, unreasonably, or contrary to due process, Third Division Award 20918.

It is our opinion that the record discloses sufficient competent and relevant evidence to support the charges against the Claimant and that the Carrier was justified in so holding.

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 Employes involved in this dispute are respectively Carrier and Employes 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 26th day of September 1984.