

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25829
Docket Number CL-25744

John E. Cloney, Referee

PARTIES TO DISPUTE: (
(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9866) that:

1. Carrier violated the agreement between the parties when it arbitrarily and injudiciously assessed Operator J. H. Dugger record with 15 days deferred suspension without justification.
2. Carrier action was unjust, arbitrary and an abuse of discretion.
3. Carrier shall now be required to expunge the charges, record of investigation and discipline from Clerk Dugger's personal record files and to compensate Mr. Dugger for all wages lost account carrier's action."

OPINION OF BOARD: Claimant J. H. Dugger, Manager of the H office at Palestine, Texas was notified by letter dated September 17, 1982 to report.

"for formal investigation to develop the facts and place your individual responsibility, if any, in connection with your alleged failure to properly input delays at Palestine, Texas on Train 141-16 on September 16th, 1982."

At opening of the investigation Claimant stated he did not completely understand the charges and asked ". . . is it the inputting or proper or improper use of the machine itself that I am being charged with . . .?" Interrogating Officer C. E. Jones replied by reading portions of the September 17 letter and stated ". . . it will be brought out in investigation what you are asking."

At the hearing it was established Claimant had entered into a computer an arrival time of 11:30 A.M. and a departure time of 1:55 P.M. for Train 141 making a total delay of two hours and 25 minutes. From the investigation it appears that these times were correct although a prior computer entry had shown the arrival time to be 12:30 P.M.

The computer operation was apparently quite new. Assistant Trainmaster Hogue stated that after reportings began on about August 1st there was some confusion and he summarized all instructions in letters issued on August 31st and September 9, 1982, entered as Exhibits A and B at the investigation. Hogue contended employees were instructed to "use the B. U. trace on all trains for arrival and departure times". Had Claimant done so, he would have been aware of the discrepancy reported in times. Hogue testified this instruction does not appear in Exhibits A or B but contended that "in almost daily instruction operators have been so instructed . . ." Hogue testified however that he could not recall the specifics of conversations he had with Claimant regarding instructions but stated his "written instructions were clear".

Claimant denied he had ever been instructed to obtain the arrival times by use of the computer and insists he had no orders other than to report the actual arrival time. He further stated he discussed with Yardmaster Overton the manner in which the delay of Train 141 should be broken down for reporting and claims Overton told him "this is all I have, you'll just have to put it down, two hours and twenty five minutes".

What could or should have been done to remedy the incorrect entry had Claimant discovered it is unclear. Hogue stated Claimant should not necessarily have informed the Clerk who made the original entry that he was incorrect and said an incorrect time would be acceptable as long as all "were agreeable".

By letter of October 1, 1982, Claimant was notified of a 15 day deferred suspension for "your violation of General Notice, Paragraph 3, and General Rule 'B' in part from the Uniform Code"

These Rules have been read into the record at the investigation. They require in pertinent part that employees ". . . obey all rules and instructions in whatever form issued, applicable to or affecting their duties."

The Organization argues the investigation was not fair and impartial because Claimant's question at the opening of the hearing was not answered and because discipline was assessed on a different issue than that charged. We do not agree. We believe the Interrogating Officer made a sufficient response to Claimant's question. We also believe the charge against Claimant was sufficiently specific.

Although this Board does not agree the investigation was less than fair and impartial we find this Claim should be sustained.

Whether or not the information Claimant fed the computer was correct is not the issue. All available evidence suggests it was correct and Carrier does not really contend otherwise. The basis for the discipline is the alleged failure to follow instructions. The crucial question is whether the evidence establishes Claimant was ever given the instruction he is said to have disregarded.

This Board is well aware of the principle that credibility resolutions are to be made by those who heard and saw the witnesses on the property and not by us. We thoroughly agree. A careful review of the transcript of the investigation reveals no testimonial conflict regarding whether Claimant was instructed to use the BU trace on all trains. Hogue testified "The written instructions do not discuss the BU functions, but were verbally discussed and instructed to be used." Claimant denied receiving such instructions and Hogue stated he couldn't recall what was said in conversations with Claimant regarding instructions. Melton, a Clerk who testified generally that there were discussions regarding instructions most evenings while he was at work worked a different shift than Claimant. There is no contention Claimant was present at such discussions. Thus this Board is not faced with a Claim that an instruction had been communicated and denial that it had been received. This Board would not, and should not, disturb resolution of such a conflict. While the Carrier seems to assume certain instructions were given to Claimant, there is no evidence to support that assumption.

It is not the function of this Board to weigh evidence disclosed at a hearing any more than it is to resolve credibility conflicts. As stated in Third Division Award 18550: "We will not disturb Carriers decision where it is supported by substantive evidence" In this case Claimant correctly entered the train's arrival time into the computer. It is claimed that in doing so he neglected to follow instructions requiring him to verify the arrival time with that already entered. Claimant denies having been given such instructions. Neither of two sets of written instructions reflect this requirement and no testimony establishes that such requirement was ever made known to Claimant. We must therefore conclude the record shows no substantive evidence that Claimant violated Rules as alleged. To the extent that the Carrier suggests also that Claimant didn't break down the cause of delay in the proper manner his testimony that he entered exactly what Trainmaster Overton told him to enter was not questioned. The suspension is to be expunged and Claimant is to be made whole for any losses suffered.

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

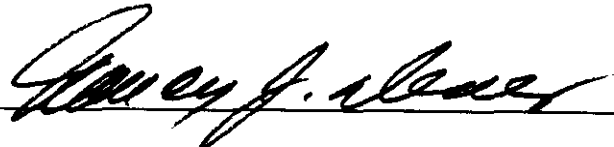
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of January 1986.

