

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25863
Docket Number SG-25839

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Seaboard System Railroad

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard System Railroad (Louisville & Nashville Railroad):

On behalf of Lead Signalman A. Y. Fuller who was assessed twenty days' suspension for allegedly falsely claiming mileage expense on October 28, 1981, on expense account of December 15, 1982."

OPINION OF BOARD: On December 15, 1982 Claimant submitted an expense account claiming automobile mileage for attendance at signal school during parts of October and November, 1981. He claimed 60 miles for October 28, 1981. Company records established Claimant called in ill on October 28 and did not attend school on that date. The expense account, signed by Claimant recites the following: "I certify that the expenses stated above are correct, and were incurred in connection with company business."

At an investigation Claimant explained his having waited about fourteen months to submit the expense report was due to several factors including lack of familiarity with the procedure. He admitted not having attended school on October 28 but said that since fourteen months had elapsed he had forgotten he missed one day. By questioning the director of Signal Training at the investigation Claimant established he had attended signal school for one day in July, 1980 and then withdrew.

At the hearing Claimant testified "My signature certifies the amount of said expense, I do not nor do I feel my signature certifies the date." Claimant noted he had frequently used his vehicle on employer business without claiming mileage and points out he didn't make a claim for the one day in July, 1980.

During the investigation Hearing Officer Strickland asked Supervisor of Signals Powell the following:

"Q. When verifying the expenses claimed, which is in the form of automobile mileage you checked the payroll for this period of time and determined that Mr. Fuller did not attend class or work on the date of October 28, 1981, is this correct?"

The Organization maintains this question shows the Hearing Officer had prior consultation with the witness. It asks "How else would (he) have known that Mr. Powell had checked the payroll against the expense record." The record reveals that in answering a question prior to the above, Powell had testified:

"On checking the expense account ... from October 26 to November 6, 1982, I found that Mr. Fuller had claimed mileage for October 28 of which he did not attend school. The payroll indicated that he was not paid for that day."

This seems to answer the Organization's question. We find nothing in the record to suggest improper contact between the Hearing Officer and the witnesses.

The Organization also argues the person who assessed the discipline also served as the first level appeal officer and thus Claimant's appeal rights have been abridged. This Board has had occasion in the past to consider the question of use of the same Carrier official to assess discipline and to rule on initial appeal and we have found such situations do not constitute per se deprivation of a fair hearing (Award 20781).

This Board believes the investigation revealed substantial evidence upon which the Carrier could conclude Claimant falsely claimed mileage expense for October 28, 1981.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

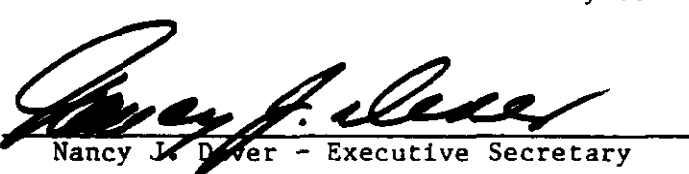
That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1986.