

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25864
Docket Number SG-25851

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 A. Y. Fuller who was assessed five days' suspension, February 14 through 18, 1983, for allegedly failing to submit Hours of Service reports in violation of outstanding instructions."

OPINION OF BOARD: Claimant was charged with:

"...failure to comply with instructions from Supervisor - Signals dated October 18, 1982 concerning submitting of Hours of Service reports and Expense Accounts. Your acknowledgement of receipt and understanding of these instructions is dated October 21, 1982."

At the subsequent investigation Supervisor - Signals Powell testified Hours of Service records are required by Federal law. On October 18, 1982, he wrote informing Claimant that he had not submitted reports for May through October and stated reports were to be submitted on the 16th and 1st of each month, or the first workday thereafter, each report to cover the preceding half month. Claimant signed this letter to acknowledge receipt. When Claimant along with others hadn't turned in the report for the second half of December by January 3 instructions were given to Foreman Roach to get the reports on January 4. Roach obtained the forms from all but Claimant. Therefore Roach had Claimant accompany him to see Assistant Signal Supervisor Owen. Owen told Claimant he could not work until he turned in the reports. Claimant left and finally turned them in on January 6.

Powell estimated the reports would take about 30 seconds per day to complete if maintained on a current basis but admitted foremen have been given no instructions to allocate a certain period of time to employes for completion of the form. Claimant's position seems to be that he has been given no time to complete the required forms and should not be required to do it on his own time.

On January 26, 1983 Superintendent Ashby wrote Claimant:

"The bottom line of evidence developed at this investigation proves that you did not comply with ... instructions. This was developed through the testimony of witnesses and yourself. Instructions from proper authority must be complied with."

Claimant was suspended for five days. After the claim was filed Ashby wrote:

"I have again reviewed the investigation and find that evidence submitted supports discipline assessed; therefore, your appeal is respectfully declined."

The Organization complains that as Ashby assessed the discipline and acted at the first level of appeal Claimant has been deprived of full appeal rights. It also urges impropriety in that the Hearing Officer introduced the October 18 letter into evidence.

This Board has had occasion in the past to consider the question of use of the same Carrier official to assess discipline and rule on initial appeal and we have found that such situations do not constitute per se deprivation of a fair hearing (Award 20781). We do not believe Claimant was in any way prejudiced by the Hearing Officer introducing the October 18 letter (which Claimant admittedly received and signed) nor do we view this action as evidence of partisanship by that officer.

The evidence established Claimant was instructed to complete the required reports but did not. If he felt it was improper to require him to complete the reports without allocating specific time in which to do them his course was clear -- that is, he should have followed instructions and sought relief through his Organization. He chose not to do so.

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 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Bever - Executive Secretary

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