

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25886
Docket Number MS-25646

Lamont E. Stallworth, Referee

PARTIES TO DISPUTE: (Charles E. Shelley
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(Seaboard System Railroad

STATEMENT OF CLAIM:

"1. Carrier violated the agreement when, without just cause, it suspended from service Mr. C. E. Shelley, Clerk at Chattanooga, Tennessee ninety (90) days - February 3 through May 3, 1982.

2. As a consequence Carrier shall:

- (a) Clear the service record of Mr. C. E. Shelley of the charges set forth in Assistant Superintendent Terminals H. B. Martin's letter of November 6, 1981, and any reference in connection therewith.
- (b) Pay Mr. Shelley for all time, wages or pay (and other benefits) lost as a result of being improperly removed from and held out of service, as indicated in portion 1. hereof and additionally three (3) work days (Tuesday December 8, 1981 - Tuesday-Wednesday January 5 & 6, 1982) attending investigation of charges cited in 2. (a) hereof resulting in a combined loss of sixty-seven (67) work days involving one (1) holiday (2-15-82) which Claimant's position worked and one (1) holiday (4-9-82) on Claimant's rest day which, combined, with the 67 days and converted to hours equal 556 Pro-Rata Hours with the 8 hours December 8, 1981 at \$11.29 per hour and the remainder at \$11.64, including C.O.L.A. for a total amount of \$6,469.04.
- (c) Pay Mr. Shelley interest at the prevailing installment rate for any and all amounts due under (b) hereof for each month or fraction thereof until payment is rendered to claimant."

OPINION OF BOARD: In this case, Claimant was working as Chief Train Clerk on November 14, 1981. Trainmaster/Agent C. C. Bryant was in the Yard Office to check on clerks calling records, having previously received complaints about Company personnel not being able to contact Chief Train Clerk Shelley on the telephone as the telephone was always busy. Shelley was on the telephone when Bryant was in the office, and Bryant asked Shelley to whom he was talking. Claimant answered by asking Bryant why he wanted to know? Bryant posed the question again, and Claimant's reply was the same. Bryant asked the Claimant if he was refusing to answer the question, and the Claimant answered that he was not refusing, but declining.

Bryant left and went to his office, where he met with Assistant Superintendent Martin. Claimant came to that office and knocked. Bryant opened the door and Claimant demanded to know what Bryant was telling Martin.

This type of behavior continued, with the Claimant making demands as to whom Bryant was talking with when a phone call for Bryant interrupted their discussion, and what he was saying.

Bryant was Claimant's immediate supervisor. The telephone belonged to the Carrier. Claimant was using it during working hours. Bryant made a reasonable request for information, and Claimant refused to answer that request, albeit couching that refusal as "declining." Claimant's continued behavior, including going to his supervisor's office and making demands on the supervisor can only be seen as clearly insubordinate.

The Claimant asserts that he was not afforded due process in the hearing which was held, alluding to its very length as proof of that. In reviewing the transcript, the Board finds no proof of a lack of due process. To the contrary, it appears to have been conducted in a proper manner, and much of its length seems due to the long responses given by Claimant.

As to the appropriateness of the discipline assessed, it is always difficult to ponder the forces present in insubordination. Clearly, if Claimant had stopped while his Supervisor was in the Yard Office and simply answered the question, the discipline would have been excessive. But Claimant did not stop. Claimant persisted in his insubordination, escalated the matter and, by his behavior, justified the discipline imposed.

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 Employee involved in this dispute are respectively Carrier and Employee 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. Decker - Executive Secretary

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