

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25989
Docket Number MW-25480

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Soo Line Railroad Company

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

(1) The twenty (20) days of suspension imposed upon Section Foreman L. Michels for alleged 'falsification of your timeroll' was arbitrary, capricious, unwarranted and on the basis of unproven charges.

(2) The claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: On August 3, 1982, Claimant, a Section Foreman, was notified of his suspension due to "falsification of your timeroll" which was described as "a very serious matter". At the subsequent Hearing Claimant testified he notified the Travelling Agent at Bisbee, N.D. on the morning of July 27, 1982, that he would not be at work that day. On July 30, 1982, Claimant made out the payroll for the second half of July and showed himself working 8 hours on July 27, 1982; four hours patrolling track and four hours leveling and lining track.

Roadmaster Radloff testified he had been at Bisbee on July 27, 1982, and noted Claimant's absence. When he saw the payroll he called Claimant to inquire. Claimant agreed he hadn't worked the 27th and said he "must just have overlooked or what". Both Claimant and Radloff then notified the Payroll Department. Claimant was not paid for the day.

On August 19, 1982, the Hearing was conducted by W. J. Egan, Assistant Regional Engineer. After the Hearing, Egan wrote Regional Engineer Parsons and stated:

"In some off the record conversations as a group, I felt that he was telling the truth in that he notified the Traveling agent that he would be off and that he made an error and oversight (sic) in making out the payroll."

On August 27, 1982, Regional Engineer Parsons informed Claimant that "For the falsification of your timeroll you are hereby given a 20 working day layoff"

The Carrier argues it cannot agree the falsification was inadvertent since the timeroll describes specific activity and was completed only three days after the layoff.

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This Board has repeatedly held it will not attempt to resolve conflicting testimony. We do not see the witnesses. We are in no position to evaluate their credibility or to choose one version of a set of facts as opposed to another. For this reason we have consistently refused to disturb findings which can be said to be based upon substantial evidence even when it appears that were we considering the case initially we would have resolved factual disputes differently. We believe that is a practical, sensible rule. (The person best able to make such judgments is the person who heard the testimony, saw the witnesses and had the opportunity to question the witnesses if it was felt necessary. It appears to us this principle operates both ways. Here the person best able to make these judgments was the Hearing Officer.) We realize this is not a case of conflicting testimony but we believe the principle is the same. At the heart of the matter is the question of whether an honest mistake or an intent to deceive caused the payroll entry. The Hearing Officer was in the best position to evaluate this. His letter written on the day of the Hearing while the testimony was fresh in his mind, makes clear he believed Claimant's contention that what took place was accidental. This Board might not have felt that had we seen the witnesses but we did not. (Had the Hearing Officer found Claimant guilty) of an intentional misrepresentation (we would almost certainly have considered his opinion conclusive.) We see no reason why it should be different here.

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 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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 26th day of March 1986.

