

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26014
Docket Number CL-26404

John W. Gaines, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(The Texas Mexican Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10012) that:

1. Carrier violated Rule 27 of the Clerks' Agreement when it dismissed Clerk M. A. Flores from its service for a period of thirty (30) days as a result of investigation held October 9, 1984.

2. Carrier's action was unjust, arbitrary and an abuse of discretion.

3. Carrier shall now be required to expunge the investigation transcript and all references thereto from Clerk Flores' personal record and compensate him for any and all losses sustained."

OPINION OF BOARD: Claimant was disciplined with a 30 day suspension for driving a Company Truck into a guard rail, causing damage to the truck requiring parts replacement and repairs.

Although Claimant admits his guilt, there was disputed testimony at the investigative Hearing accorded him, over whether Claimant actually or possibly encountered a steering mechanism difficulty in the circumstances leading to the accident. Also disputed was whether Notice of the Investigation charging Claimant was specific in setting forth the precise charge and whether the Hearing Officer validly could also function as Carrier's First Officer in line of appeal.

We consider the charge precisely stated. Further, the Hearing Officer took no adversarial position either way. He gave no testimony, and functioned in official capacity free from any prejudicial act.

The record amply justifies the Hearing Officer's determination of Claimant's guilt. But in this instance, the penalty is too severe.

We will award that Claimant's suspension be reduced to a 15 day suspension, rather than 30 days' corrective discipline as assessed.

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 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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest.



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1986.

