

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26239
Docket Number SG-26683

Edwin H. Be"", Referee

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

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard System Railroad (formerly Seaboard Coast Lines):

Claim on behalf of Signal Maintainer, R. Highsmith, for reinstatement to service with full compensation and restoration of all other rights, effective July 18, 1984. General Chairman File: R. Highsmith 84-47. **Carrier** File: 15-47 (84-44) L."

OPINION OF BOARD: Claimant, an **employee** since October, 1973, held the position of Signal **Maintainer** No. 2, headquartered at Jacksonville, Florida.

Because of recurring signal failures, on June 15, 1984, Signal Supervisor R. T. Parker and Assistant Signal Supervisor R. L. Kondy conducted an inspection of Claimant's territory. According to the Carrier, the inspection revealed that Claimant's territory was in a neglected and unsatisfactory condition. Further investigation revealed that certain required tests and reports were delinquent as were several other job required duties.

By letter dated June 19, 1984, Claimant was charged with failure to properly maintain equipment, make necessary inspections and tests, file necessary reports and carry out instructions. The Hearing on the charges substantiated the Carrier's charges and revealed that on several occasions, Claimant was advised in writing that he should change his less than desirous work habits. The record further reveals that Claimant was also counseled concerning his work difficulties and was given additional help. Additionally, Claimant's personnel record shows previous suspensions for similar problems. After Hearing, by letter dated July 17, 1984, Claimant was dismissed from service effective at the end of the workday, July 18, 1984.

The Organization first contends that Claimant was denied due process in the Hearing because of the role played by Supervisor Parker in the disciplinary process. The record reveals that Supervisor Parker issued the charges against Claimant and further testified at the Hearing. In addition, at the commencement of the Hearing, Supervisor Parker briefly asked several questions of Assistant Signal Supervisor Kondy concerning Claimant's failure to make required reports. Thereafter, at the request of the Organization, Supervisor Parker was removed from any questioning capacity by the Conducting Officer, Trainmaster E. G. Richardson and the remainder of the lengthy Hearing was conducted by Conducting Officer Richardson.

Each case raising the issue of multiplicity of roles in the discipline process by Carrier Officers must be examined on its individual facts to determine whether there has been a deprivation of the right to a fair Hearing. Second Division Awards 8322; 7032. While duality of roles is neither condoned nor encouraged, the key is to determine whether demonstrable prejudice to the **employee** exists by virtue of multiple roles of the Officer. Third Division Award 20781; Second Division Award 8322. Under the circumstances of this **case**, we believe that no demonstrable prejudice has been shown. Claimant had able and competent representation at the Hearing and the record demonstrates vigorous cross-examination of the Carrier's witnesses. Further, Claimant was able to fully testify concerning his version of the relevant facts. While Supervisor Parker did testify against Claimant and did ask questions of another witness, such questions were brief and the record clearly demonstrates that at all times the Hearing was conducted by the Conducting Officer, **Trainmaster Richardson**, who had no known connection to the facts in this case. Finally, the discipline rendered after the Hearing was not assessed by Parker. Weighing the foregoing satisfies us that no prejudice to Claimant has been shown".

The Organization next contends that the discipline assessed was arbitrary and excessive. We find substantial evidence in the record to support the Carrier's conclusion that Claimant engaged in the conduct with which he was charged, i.e., the failure to properly maintain equipment, make necessary inspections and tests, file necessary reports and carry out instructions. Considering that Claimant had been previously warned, counseled and progressively disciplined concerning these same types of errors, there is nothing in this record to cause us to find that the discipline assessed was either arbitrary or excessive.

Finally, the Organization contends that the Carrier violated Rule 47 of the Agreement when it failed to respond to the first level appeal within 30 days as required by that Rule. In this regard, the Organization is correct. The record reveals that the General Chairman made the first level appeal on July 23, 1984. Rule 47 requires a response within 30 days. The Carrier did not respond until September 20, 1984. This procedural violation, however, does not entitle Claimant to be restored to service. It is well established that a late denial is effective to toll the Carrier's liability for a procedural violation as of the date of that denial. From the date of the late denial, disputes are thereafter considered on their merits. Third Division Awards 25604; 25473; 24298; 24269; Decision No. 16 of the National Disputes Committee. Therefore, since we have previously found that substantial evidence exists to support the Carrier's decision to discipline Claimant and that the discipline imposed was neither arbitrary nor excessive, Claimant shall not be restored to service but, because of the late denial, Claimant shall be compensated from July 19, 1984 to September 20, 1984.

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 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

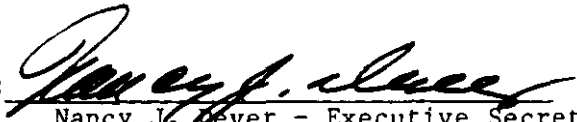
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1987.