

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26441
Docket Number MS-26601

James R. Johnson, Referee

(J. H. Johnson
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of J. H. Johnson that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Los Angeles, California, on or about July 25, 1983, when it wrongfully assessed the personal record of Mr. J. H. Johnson with thirty demerits, and

(b) Carrier shall not remove the thirty demerits and any reference to the formal investigation held on July 12, 1983, from the personal record of Mr. J. H. Johnson."

OPINION OF BOARD: This is the second of three cases before this Board which involve this Claimant (see Third Division Awards 26440 and 26442). Claimant "as employed by the Carrier for nineteen years, and was charged with reporting late for work on June 13 and 20, 1983. As the result of an Investigation held on July 12, 1983, Claimant "as assessed thirty demerits under the Brown System of Discipline in effect on this property.

Claimant raises several objections to the handling of the Investigation, and denies timely receipt of the notice of discipline. Further, he denies that he "as late without permission, and asserts that he "as innocent of the charges.

Claimant asserts that the Hearing "as "illegal" because it was scheduled to begin at 9:00 A.M., and did not commence until 9:15 A.M. on the date scheduled. The Board finds no merit to the objection. The Claimant asserts that he "as "harassed" by the Investigating Officer during the course of the Hearing; but the record reflects that the Hearing Officer "as quite patient with the Claimant during the Hearing, and afforded him wide opportunity to develop his case. If anything, it appears that the Claimant "as harassing the Hearing Officer. The Board finds that the Claimant "as afforded a fair Hearing within the meaning of the Agreement.

Finally, the Claimant asserts that he "as not properly notified of the amount of discipline assessed. The record here contains a conflict in evidence. Although the Claimant denies receipt, the Carrier's copy contains the following notation:

"8:30 A.M., July 26, 1983, above letter and transcript of investigation given to Mr. Johnson in the Communications Department, Los Angeles. Mr. Johnson refused to sign this acknowledgment but did retain the letter and transcript of investigation.

L. A. Levario, Wire Chief"

While this Board seldom attempts to resolve conflicts in testimony, it will do so in this instance, because it found in the prior case (see Third Division Award 26440), that Claimant had evaded the notice of discipline. Under such circumstances, he has no credibility with regard to this issue. The Board finds the objection to be without merit.

The record also contains conflicting evidence with regard to the merits of the dispute. With respect to Claimant's admitted tardiness on June 13, Claimant's Supervisor testified that Claimant claimed to have been delayed by traffic at the time of the offense. However, Claimant testified at the Investigation that he had been performing "personal business" and had permission to be late. The Supervisor denied giving any permission, or knowing about "personal business." The Claimant's testimony not only conflicts with that of the Supervisor, but with his own. The Carrier resolved the conflict in favor of the Supervisor, and the Board can find no fault with its decision.

Claimant denies being late on June 20, 1983, and the Supervisor testifies that he was late. The Board finds that sufficient evidence was adduced in the Hearing to warrant a finding of guilt of the charges.

With respect to the amount of discipline assessed, it is arguable that thirty demerits was excessive; however, in view of the Claimant's past record, there is no compelling reason to disturb the discipline assessed. We will deny the Claim.

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 not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of August 1987.