

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26733

Docket Number CL-26834

Marty E. Zusman, 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-10058) that:

1. Carrier violated the Rules Agreement between the parties when it suspended Clerk R. Ramos from its service for thirty (30) days as a result of investigation held Friday, January 4, 1985.

2. Carrier's action in suspending Clerk Ramos from service was unjust, arbitrary and an abuse of discretion.

3. Carrier shall now be required to expunge the record of investigation from Clerk Ramos' personal file and compensate him for all wage and other losses sustained for the thirty (30) day period."

OPINION OF BOARD: On January 4, 1985, an Investigation was held into the alleged violation of General Notice B and Rule 801 by the Claimant. The alleged violation occurred on October 22, 1984, in that Claimant was considered by the Carrier as having failed to properly calculate the net weight of cars, list properly the capacity, date of tare and weather conditions on the scale tickets, and to have grossly violated weight limitations. Following the Investigation, the Claimant was notified by letter of January 10, 1985, that he had been found guilty and assessed a thirty (30) days suspension.

The Organization advanced its Claim on the property on the basis that the violation of weight limitations as indicated in the transcript was common. Under the circumstances of the instant case it argues that the discipline was not justified. The Organization advanced its Claim to this Board including numerous arguments pertaining explicitly to procedural violations. Overall, it holds that the record does not warrant a thirty (30) days suspension.

The Carrier argued on the property that the Claimant admitted errors in the weighing of cars and further that problems of overloaded cars were to be brought to the attention of a proper officer, which Claimant failed to do. Moreover, his admitted failure was "most negligent" in that the overloaded cars created serious danger. One car was 66,420 pounds over the capacity weight when it was forwarded from Corpus Christi to Laredo, Texas. The Carrier argues that the assessed discipline was fully warranted. To this Board it added information with respect to past discipline.

Preliminary to our decision, we must point out that only materials, facts and lines of argument raised on the property may be considered by this Board. As we have stated in prior Awards, it is a firmly established position of the National Railroad Adjustment Board, and codified by Circular No. 1 that all materials and lines of argument not handled on the property may not be considered by this Board (Third Division Awards 25251, 24934). The alleged procedural violations are not a matter raised and handled on the property and are therefore not properly before this Board. The past discipline of the Claimant is not a part of the record on the property.

As to the merits, the Claimant by his own admission, failed to follow instructions in the proper completion of the scale tickets. The evidence indicates that the cars were grossly overweight and the errors committed were not only serious, but numerous.

Rule 801 states in pertinent part that:

"Indifference in the performance of duties will not be condoned. Employees who are careless of the safety of themselves or others, . . . will not be retained in the service."

General Notice B reads in part:

"Employees must be conversant with and obey the rules If in doubt as to their meaning, they must apply to proper authority for an explanation."

The Claimant is guilty of the charges. The record of the Investigation has substantial evidence that the Claimant committed errors which created a major hazard to employees and property. There is nothing in the record of this case indicating that the discipline assessed was not Rule supported nor commensurate with the seriousness of the violation. This Board will not disturb the Carrier's action. The Claim is denied.

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

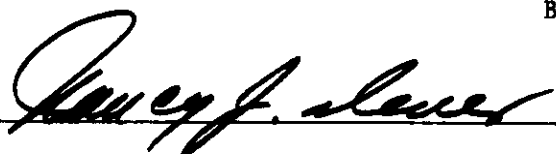
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A handwritten signature in dark ink, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1987.