

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27038
Docket No. SG-26858
88-3-85-3-620

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Chicago & North Western Transportation Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago & Northwestern Transportation Company:

On behalf of S. R. Godfrey for 33 days' pay at his pro-rata rate and an additional \$10.00 per day, account Carrier assessed him with excessive discipline and violated Rule 53(a) of the current agreement when it suspended him for 45 days commencing on August 27, 1984. General Chairman file: G-AV-51. Carrier file: 79-84-21."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The basic facts of this case are set forth as follows: During June, 1984, Claimant was employed as a Signal Maintainer on the second shift at Butler, Wisconsin. He was responsible for keeping the Signal Shop locked when he was not present and was the only Signal employee on duty during his assigned worked hours (3:00 P.M. - 11:00 P.M., Sunday through Thursday). On July 27, 1984, based upon a printout of telephone activity for Claimant's telephone extension, which showed a 24 minute phone call made on June 12, 1984 (at 8:52 P.M.), the Signal Supervisor investigated further and received a printout of all June, 1984, phone activity for that extension. This latter information revealed that additional calls were made during Claimant's assigned work hours and he was subsequently directed to attend an Investigation on August 2, 1984. The Investigation was postponed at the request of the Local Chairman and held on August 21, 1984. A formal Discipline Notice (No. 650) dated August 23, 1984, was issued to Claimant, wherein he was informed that he was assessed a

45 calendar days actual suspension, beginning August 27, 1984, and this disposition was appealed by the Organization consistent the applicable procedures of the controlling Agreement.

In defense of his petition, Claimant charges that Carrier violated Rule 53 (a), since the Employer failed to conduct the Investigation within the required time limits. In effect, he asserts that since the computer printout for June, 1984, was ostensibly received at the end of the month, Carrier should have commenced the Investigation during the first week of July, 1984. Instead, he argues Carrier breached Rule 53 (a), when it neglected to observe the Agreement specified time limits requirement and, accordingly, the claim should be sustained for its inaction. Furthermore, he maintains that assuming arguendo that the claim is procedurally valid and properly before the Third Division, the discipline is indeed excessive when measured against the discipline assessed other employees for the same type of asserted offense. On this point, he contends that Carrier assessed blatantly disparate discipline.

In response to these arguments, Carrier points out that at no time during the on situs Investigative Hearing did Claimant or his Representative challenge or refute the testimony of the Signal Supervisor, that he, the Signal Supervisor did not receive the first June, 1984, printout until July 27, 1984, nor deny making a few personal calls, except for the 24 minutes call on June 12, 1984. Claimant denied making this lengthy call. Moreover, Carrier argues that the suspension assessed was neither arbitrary nor capricious nor at variance with the discipline assessed other employees, since Claimant's employment record shows that he was assessed a 30 days suspension in March, 1978, and another 20 days suspension in May, 1983. Consequently, it asserts that the instant suspension was progressive and corrective in nature and in accordance with the accepted norms of work place discipline.

In considering this case, we concur with Carrier's position on both the procedural and substantive questions raised. We find no evidence that the Signal Supervisor did not receive the first telephone printout on July 27, 1984, nor any clear documentary evidence that such receipt was late or violative of normal informational distribution policies. Carrier's subsequent actions were appropriate and consistent with Rule 53 (a). Since Claimant's admissions of making a few calls during June, 1984, are supportive of the primary charges, and since the thrust of his defense relates to the dimensions of the assessed penalty, we must, of necessity, consider the appropriateness of the 45 days actual suspension. As a rule and given this type of work place offense, we would ordinarily not be too sympathetic to a penalty that appears on its face to be excessive, especially when other employees have received lesser discipline for similar offenses. All things being equal, we would probably modify the penalty to fit equitably the circumstances and severity of the charged offence. In this case, where Claimant had received two prior significant disciplinary assessments and where the record shows that he made unauthorized personal phone calls, it would be difficult for us to overlook these past offenses or the relevance and necessity of progressive discipline. Otherwise, the well institutionalized practice of corrective discipline would be vitiated.

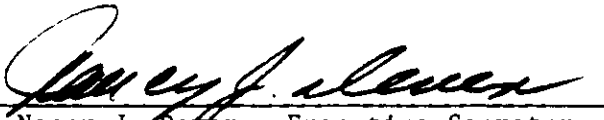
For these reasons we are compelled to find for Carrier and, as such,
the claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1988.