

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Handlers,
PARTIES TO DISPUTE: (
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10005) that:

1. Carrier violated the Clerks' Rules Agreement when, on March 22, 1984, following investigation held on March 15, 1984, it assessed discipline of thirty (30) days actual suspension to Operator J. H. Dugger without giving reasonable consideration to the circumstances involved.

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

3. Carrier shall now be required to clear Claimant's record and, in addition, compensate him for all wage and other losses sustained by him."

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 Claimant in this case has an established seniority date of November 15, 1949, and on the date involved in the investigation held the position of Relief Operator "H Office" at Palestine, Texas. On January 13, 1984, the Claimant was directed to attend an investigation. The notice read in pertinent part as follows:

"Report to the Superintendent's Conference Room, Palestine, Texas, Tuesday, January 17, 1984, at 10:00 am for formal investigation to develop the facts and place your individual responsibility, if any, in connection with your alleged failure to properly clear Extra 6073 north at Palestine at 9:23 pm, January 8, 1984, while you were working Job 016, 3:00 pm to 11:00 pm. Assistant Manager H-Office and Dispatcher Job 204, 3:30 pm to 11:30 pm, January 8, 1984, respectively.

You may arrange for representative of your choice as permitted by the applicable agreement and any witnesses desired by you."

After several postponements, the hearing was conducted on March 15, 1985. Subsequently, the Claimant was assessed the discipline now on appeal before the Board.

The discipline is challenged on the basis of procedural and substantive considerations. However, we find no basis to these contentions.

First we conclude the Claimant did have a fair hearing. The charge was sufficiently precise to enable the Claimant to prepare a defense and it is evident he had no problem doing so.

Regarding the merits, it is more than apparent that the Claimant failed to properly clear the train in question. It was developed at the hearing that Claimant had cleared Extra 6073 North at 9:23 P.M. on January 8, 1984, with eight (8) orders 401, 410, 416, 418, 753, 774, 779, and 782 and before going off duty left the clearance and orders in the window for the train crew. The train crew came on duty after the Claimant had gone off duty at 11:00 P.M. and then discovered they had four train orders for southbound trains.


The Organization also contended that the discipline was too severe. However, we find no evidence to so conclude, particularly in view of the Claimant's past record. His record included a 60 day suspension for a similar violation of the rules, which was upheld by the Board in Third Division Award 25828.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dey - Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1988.