

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27160
Docket No. MW-27469
88-3-86-3-660

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

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Soo Line Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The thirty (30) days of suspension imposed upon Crossing Gang Foreman R. A. Pahl for alleged violation of Rule 770 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File 13-6 Op. 770/800-16-A-72).

(2) The Claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

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 employees 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.

This claim involves a dispute over the imposition of a thirty-day suspension on the Claimant for his alleged role in the receipt of money and other valued consideration in exchange for company material without authorization. An appeal was filed and handled on the property. When not satisfactorily resolved, it was advanced to the Board for a final determination.

When the Claim reached the Board, it became apparent that a transcript of the investigation held on July 12, 1985, did not accompany the parties' submissions. While a transcript existed, it was not forwarded to the Board. The question then arises as to whether, because of this procedural defect, the claim should be sustained in full as submitted or dismissed. The answer to that question is determined by establishing which party has the burden of proof in a case--and, consequently, the responsibility for submitting all relevant documents.

Clearly, in discipline/discharge cases, that burden is said to rest with the Carrier. It has been argued, however, that once a hearing or investigation is held and a decision has been rendered, the burden then shifts to the opposing party who finds fault with that decision and seeks to appeal it. The Board does not find that argument persuasive. While that scenario may be appropriate in a court setting, where a lower court decision is reviewed on appeal, it does not hold true for grievance and claim handling where the parties are not expected to have the same degree of legal expertise as attorneys. This is especially true in the rail industry, where the initial decision is made by a Carrier representative on the property, rather than a judge. Thus, up to and including the final stage of the appeals process, the Carrier retains the burden of proving that its decision to discipline or discharge an employe is well founded.

Under the circumstances present in this case, the claim must be sustained. This decision is in keeping with Third Division Award 23015.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1988.