

The Third Division consisted of the regular members and in addition Referee William F. Euker when award was rendered.

(Clyde Phillips
PARTIES TO DISPUTE: (
(CSX Transportation Company (Former Chesapeake and Ohio
(Railway Company)

STATEMENT OF CLAIM:

"1. Was the document wrongfully dismissed for claiming over time upon two occasions, both having been approved by a Trainmaster?

2. Did the carrier ignore the testimony of witnesses in finding claimant guilty?"

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 were given due notice of hearing thereon.

This dispute consists of two separate incidents involving an Operator-Clerk who was charged with falsifying reports by claiming overtime on January 31, February 4, 1985. A formal investigation was held for each alleged infraction, after which, Claimant was assessed a 60 day suspension for the first incident and dismissed for the second. The claims were appealed on the property in the usual manner by the Organization without resolution and are jointly presented for our determination.

We suspect the vast majority of discipline cases presented to this tribunal involve the issue of credibility as the primary focus. The case at hand is no exception. The factual situation on both dates is essentially the same, although some of the players are different. At the investigation, the Road Foreman of Engines testified that on January 31, 1985, he appeared at Claimant's duty station at 4:50 P.M., was made aware Claimant had submitted Forms P437 and P200 (Overtime Slips), claiming one and one-half hours overtime, before he left the yard office at 4:10 P.M. Claimant's normal tour extended from 8 A.M. to 4 P.M. The Road Foreman testified he conducted a

search of the area but was unable to locate the Claimant. The issue of credibility enters the dispute at this point. Claimant avers he was at the North end of the Yard checking track. The witnesses who testified at the trial contradict this testimony, and the Agent, with whom Claimant allegedly had a brief encounter, denied seeing him on that date.

The facts concerning Claimant's whereabouts were not substantially different for the second date, February 4, 1985. On this date, the sole witness called by Claimant was unable to verify or substantiate his presence on the property after he left the yard office. Again we have assertions, but little in the way of hard evidence to bolster Claimant's story, which was to the effect he visited the North end after he left the yard office and then called in certain corrections for the turnover sheet at 5:25 P.M.

Although Claimant conceded it was necessary to obtain permission in advance to work overtime, he admitted he did not have permission on either date. More important there is no credible evidence in either case that Claimant performed any overtime service for the Carrier. Contrary to the Petitioner's assertion, Carrier has no obligation to prove the charges "beyond a reasonable doubt." Substantial evidence is the proper test applicable and in our judgment that test has been met in this case. Time card manipulation, when proven, is tantamount to theft and is a dismissal offense.

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 29th day of March 1989.