

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Monongahela Railway Company

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

(1) The discipline [thirty (30) days suspension from service deferred for one year and a five (5) year disqualification for positions of foreman or those requiring operation of on-track vehicles] imposed upon Track Patrol Foreman P. P. Nosky for alleged 'Violation of Monongahela Railway Book of Operating Rules, General Rules A, B1-2, B1-6, B1-7 and T' and for alleged 'Violation of Monongahela Railway Block Clearance Rules 302, 318 and 319' was without just and sufficient cause and in violation of the Agreement.

(2) Claimant P. P. Nosky shall be restored to his former position as track patrol foreman with seniority as such unimpaired, his record shall be cleared of the charges 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 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 were given due notice of hearing thereon.

As of December, 1983, Claimant was working as a Track Patrol Foreman, 7 A.M. to 3:30 P.M. On December 22, 23 and 30, 1983, he left work early, due to illness or family problems, without obtaining permission or even notifying his Supervisor. Notwithstanding his early quit on each of these days, Claimant put in for a full eight hours pay on his time sheet. In addition, on December 30, 1983, Claimant left the patrol truck sitting on the main track until 1:32 P.M., even though his block clearance had expired at 1:00 P.M. and he falsely had reported being in the clear of 12:32 P.M.

Following due notice and Investigation, at which Claimant essentially admitted the foregoing charges, but pleaded factors in mitigation, i.e., leaving early for illness and family difficulties and leaving the vehicle on the track after expiration of the block clearance because he "knew no train was coming." After considering the facts and Claimant's 17 year service record, Carrier imposed a deferred 30 day suspension and a 5-year disqualification as Foreman.

This discipline was appealed on grounds that Carrier violated procedural requisites in the conduct of the Hearing and that the discipline was unnecessarily harsh and excessive. The primary objection is to the transcript of Investigation which Carrier provided Claimant and his Representative. It is not disputed that a tape recorder malfunctioned during the Hearing and the transcript therefore was less than perfect. Given the realities of this case, however, including Claimant's admission of guilt both at the Hearing and in subsequent conferences, we can find no fatal procedural defect in this record. As to the quantum of discipline, it may be severe but we cannot say that it is unreasonably harsh or arbitrary. In the circumstances presented here we must deny this Claim.

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 13th day of April 1989.