

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

"Claim on behalf of R. J. Simpson for removal of discipline from his personal record and payment of all lost pay and benefits, from March 30 through April 5, 1987, account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 59(a), when it failed to charge him properly and within the time limits." Carrier file SIG-TUC-87-S.

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.

An Investigation was held on March 5, 1987, to determine the facts in connection with Claimant's asserted failure to submit FRA Hours of Service reports for January and the first half of February 1987, and DAR log books for December 1986, and January 1987. Specifically, the Investigation focused on whether Claimant violated Rule J and Rule 607 of the Rules and Regulations for the Maintenance of Way and Structures based on the record compiled at the Investigative Hearing. Carrier concluded that said Rules were violated and accordingly Claimant was assessed a seven-day suspension. The suspension ran from March 30, 1987, through April 5, 1987.

In defense of its petition, the Organization contends that Claimant's Agreement due process rights were violated, since Carrier restricted its attention to one particular Supervisor's testimony and predetermined highly selective documents. The Organization specifically charges that Carrier failed to produce requested identifiable witnesses/records, and such refusal handicapped the Claimant's defense. The Organization maintains that the Investigation was untimely held since Carrier was aware of the alleged offense well before February 23, 1987.

More pointedly it argues that the Supervisor lacked personal knowledge of Carrier's actual receipt of said records as evidenced by the Supervisor's testimony that he first learned of such information on February 23, 1987, and moreover, it was frequently the norm for Carrier officials to mishandle similar documents. The Claimant denied that he failed to submit his DAR log books for December 1986, and January 1987, arguing instead that he complied with the Rule's requirements. Conversely, he acknowledged that he did not submit the Hours of Service Report at the exact time, but qualified this admission with the added observation that he had not found any authoritative source indicating the precise time to submit them.

In response, Carrier asserts that it properly complied with the time limit requirements of Rule 59 (a), since the Supervisor did not have knowledge that the reports were not submitted until February 23, 1987. Thus, the February 26, 1987 notice of Investigation was timely issued. It defended its ruling at the Investigation precluding the presence of the Division Signal Inspector, et. al., on the grounds that said officials were unnecessary at the Hearing and its collateral ruling refusing Claimant's request for all signed reports, Hours of Service reports from the Rio Grande seniority district for October, November, December 1986 and January and the first half of 1987. The latter ruling was predicated upon the voluminous nature of the materials and their questionable relevancy to the Investigation.

Furthermore, it points out that Claimant was fully apprised at a safety meeting held on October 23, 1986, that said reports must be completed and submitted in accordance with specified procedures and also admonished by letter dated November 14, 1986, that despite said instructions he failed to submit his Hours of Service reports for the first and second half of October 1986, and the DAR log book for October 1986. It notes that he was informed that it would not accept excuses for non-compliance in the future and, as such, he was implicitly warned that discipline would be assessed.

Accordingly, when he failed to submit his Hours of Service report for January and February 1987, and the DAR log books for December 1986, and January 1987, it was justified in taking appropriate disciplinary action.

In considering the procedural objections raised by the Organization, the Board finds the dispute properly before us. We have considered the question of "time limits" as advanced by the Organization, but under the circumstances, particularly the on situs procedures and methodology of submitting reports, we find that the Supervisor was first aware of the non-receipt of the DAR log books and Hours of Service report on February 23, 1987. Furthermore, as to the related question of Carrier's preclusion of witnesses and reports, the Board finds that the said witnesses were unnecessary and the documents requested of minimal value to the proceeding. By this ruling we are not negating or modifying past Board decisions or similar due process concerns, but merely exercising our judicial discretion where the relevancy of materials and witnesses are indeed questionable. Due process is not served by an obfuscation of the record. In view of the Supervisor's November 14, 1986, direct admonition, specifically Claimant's failure to submit his Hours of Service report for the first and second half of October 1986 and his DAR log book for the same month, the Board, of necessity, must conclude that he was fully aware

of the reporting procedures. He was also informed on October 23, 1986, via a group safety discussion of the applicable procedures. Since he was specifically placed on notice that Carrier would not accept any excuses for non-compliance, he was implicitly apprised that discipline was a distinct possibility. His subsequent failure to comply with the October 23, 1986 instructions and November 11, 1986 warnings warranted disciplinary action.

On the other hand, the Board finds the seven (7) day suspension excessive under the circumstances, and accordingly, said suspension is reduced to three (3) days.

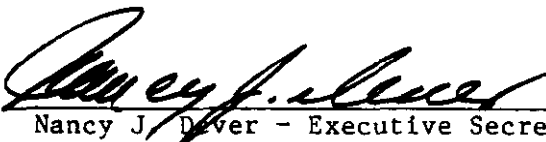
This penalty modification is more in accordance with the norms of progressive discipline and the nature of the rule violation. Claimant is to be made whole for the difference in time.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1990.