

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28704
Docket No. MW-29295
91-3-90-3-196

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

(CSX Transportation, Inc. (formerly The Seaboard Coast
(Line Railroad Company)

PARTIES TO DISPUTE:

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(Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

"(1) The Agreement was violated when the Carrier assessed W. L. Steed a five (5) day suspension for leaving work after being told by his supervisor that he could not be off. [Carrier's file 12 (89-727), Organization's file 37-SCL-89-45].

(2) As a consequence of the aforesaid violation, Mr. W. L. Steed's record shall be cleared of all charges leveled against him and he be compensated for all time lost as a result of the suspension."

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 waived right of appearance at hearing thereon.

On June 12, 1989, Carrier directed the Claimant to attend a Hearing on an allegation that he had "...left your job...without permission..." in violation of specified rules.

Subsequent to the Investigation, the Claimant was suspended for five (5) days.

The Claimant testified that on the day in question, he asked the Assistant Foreman for permission to depart the work site early and permission was granted. He testified that he told the Assistant Foreman that he had some business to take care of, because he had been rolled and the Assistant said "... you go ahead and leave...."

The Assistant Foreman testified that he did not give the Claimant permission to leave and suggested on two occasions that the Claimant had not even asked for permission. However, on another occasion he stated, in answer to the direct question of whether or not the Claimant had asked for permission to leave "I believe he did."

In specific terms, the Assistant Foreman testified that "He told me he was going in with the dinner wagon, he didn't have a job anyway, he got rolled and I told him you do anything you feel like you want to do. I can't tell you to go, that's up to you...." (underscoring supplied)

Another Employee who was present during the discussion generally confirms the testimony of the Claimant, and states that the Assistant Foreman gave permission and stated, "He said ok. He said a man has got to do what he has got to do."

The Claimant states that he did see the Foreman earlier in the day, but he did not seek his permission to leave early, because at that time, he had not formulated his plans about a displacement.

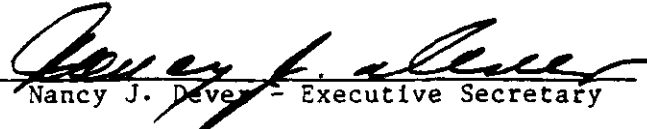
The Carrier concedes that there is certain testimonial conflict in the record, and it did afford benefit of any doubt to the Claimant since it only imposed a five (5) day suspension. Nevertheless, the Carrier reminds this Board that a long line of Awards have established and retained the concept that it is not incumbent upon a Board such as this to substitute its judgment for the Carrier's and that the Hearing Officer, as the trier of facts, must resolve all questions of credibility.

This Board does not dispute the concepts expressed above. We remind Carrier, however, that this Board does have the authority and jurisdiction to review a record to assure that it contains a valid basis for the Hearing Officer's conclusions. To be sure, it is extremely rare for this Board to reverse a case based upon a factual determination. But, as is the case here, there are circumstances where such an action ~~is~~ taken. Leaving aside any credibility question, we find that the only evidence against the Claimant is the Assistant Foreman's testimony. The Roadmaster and the Foreman were not present at the discussion and thus, their testimony neither harms nor helps the Claimant. Upon a reading of the entire transcript, we are of the view that the Claimant could reasonably infer, just from the Assistant Foreman's testimony, that he was not in jeopardy by leaving in the manner described in order to attend to another work related matter, i.e. seeing to a displacement.

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 28th day of February 1991.