Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 29390
THIRD DIVISION Docket No. CL-29740
92-3-91-3-235

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

PARTIES TO DISPUTE: (Transportation Communications International Union
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(Gateway Western Railway

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10576) that:

1. Company violated the agreement between the parties when it wrongfully suspended Clerk Walt Francz, Kansas City, MO., from service of the Company for fifteen (15) days, commencing 12:01 a.m., Wednesday, July 18, 1990 and ending 11:59 p.m. Wednesday, August 1, 1990, following investigation held July 12, 1990.

2. Company shall now be required to compensate Clerk Walt Francz for fifteen (15) day's pay, July 18, through August 1, 1990, and his record be cleared of all charges as a result of investigation."

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.

The circumstances in this case are directly related to the situations involved in Third Division Awards 29391 and 29392 each of which will be addressed separately, but must be mentioned here to give continuity to the events which make up this trilogy of cases.

On June 18 and 19, 1990, Claimant was employed as an Operator on the 3:00 P.M. to 11:00 P.M. shift at Carrier's Kansas City, Missouri, facility. During his tour of duty on each date Claimant was required as part of his assigned duties to prepare certain reports regarding car movements and shipper activities which were sent directly to the Carrier President. The contents of these reports was questioned by the Carrier President. This inquiry caused

the Freight Agency Manager to review the basic information from which the reports were prepared by Claimant. On the basis of this review, Claimant was notified to attend an Investigation on the charge of preparing erroneous reports. The Investigation was conducted on July 12, 1990. Claimant was present throughout the Hearing, he was represented and testified on his own behalf. Subsequently, by notice dated July 17, 1990, Claimant was notified that he was found guilty as charged and was assessed discipline by suspension of fifteen days to commence July 18, 1990, and continue to August 1, 1990.

In progressing this claim through the on-property handling, the Organization argued that the time limits for holding the Investigation had been violated. They also argued that the Hearing Officer was late reporting for the Hearing and this fact impacted adversely on the Claimant. They also argued that the Hearing record did not support the charge. Before our Board, the Organization added arguments relative to the multiple roles of the Hearing Officer; to the contention that Claimant's guilt was pre-determined and that the notice of discipline was defective because it made reference to Claimant's prior record.

The arguments relative to the multiple roles of the Hearing Officer, the predetermination of guilt and the reference to Claimant's prior record, coming as they did for the first time before this Board, are not proper matters for our consideration and they are dismissed.

The time limit argument is the same contention as was addressed by our Board in Third Division Award 29392. Our decision in that case applies equally in this instance.

On the merits, we have reviewed the Hearing transcript with its several attachments and do not find the quantum of proof necessary to arrive at a conclusion of guilt. The alleged erroneously prepared reports had been altered to the point that they were, at best, second hand evidence which could not be directly attributed to the Claimant. In short, the Hearing did not prove by substantial evidence that Claimant was guilty as charged. Therefore, that portion of the claim is sustained.

However, as to that portion of the Statement of Claim which relates to compensation for the period from July 18 through August 1, 1990, it is the determination of this Board that there was no lost compensation during that time period because of the Claimant being on suspension as a result of Third Division Award 29392. The compensation portion of this case is a nullity.

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 17th day of September 1992.