

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29591
Docket No. MW-30241
93-3-91-3-697

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

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The disciplinary suspensions of Laborers F. Blosser, E. Taylor, III, C. Jones, Jr. and C. Kenyon, for alleged violations of General Rules B and/or T on February 14, 1991, was arbitrary, without just and sufficient cause, exceedingly harsh and in violation of the Agreement.

(2) The Claimants shall have their records cleared of the charges leveled against them and they 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 employee or employees involved in this dispute are respectively carrier and employee 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 the evening of February 12, 1991, Carrier experienced a major derailment in the vicinity of Madsville, Pennsylvania. Between fifty and sixty Maintenance of Way employees were directed to report to the derailment site at 7:00 A.M. the following morning to replace approximately 1200 feet of track which had been damaged. These employees, including the four Claimants herein, worked around the clock performing this repair work. The weather during this period of time was cold and raining.

Sometime between 5:30 and 6:00 A.M. on February 14, 1991, Supervisor Testa gave the order for the employees to go into town for breakfast. Instead of going for breakfast, Claimants went home and did not return for the rest of the day. The remainder of the employees returned to work and continued until the track was restored to service at 5:55 P.M.

Claimants were subsequently removed from service pending investigation, at which they were charged with violations of the following General Rules:

"B. Loyalty to the Company is a condition of employment. Acts of disloyalty, hostility or willful disregard of the Company's interest are prohibited. Such acts include, but are not limited to the following:

1. Insubordination

* * *

7. Absence without permission and unjustified or excessive absences.

E. (1) Employees must devote themselves exclusively to the Company's service while on duty, render every assistance in their power in carrying out the rules and special instructions and promptly report to the proper official any violation."

* * *

"(9) Any act of hostility or willful disregard of the Company's interest will not be condoned.

T. Employees must report for duty at the required time and place. No employee will be allowed to absent himself from duty without authority of their immediate supervisor nor will any employee be allowed to engage a substitute to perform his duties. Employees subject to call for their tour of duty must not absent themselves from their usual calling place without notice to those required to call them."

Following the Investigation, Claimants Taylor, Jones and Kenyon were found guilty of violating Rules B7 and T, and were assessed 60 day suspensions. Claimant Blosser was found guilty of violating only Rule T, and was assessed a fifteen day suspension. The 60 day suspensions were subsequently reduced to 26 days by the Carrier.

The Organization first asserts Claimants were denied a fair and impartial Investigation because Carrier failed to provide them with a notice of the precise charge against them. Our review of the charge, which contains the date of the alleged infraction, as well as the rule text as quoted above, causes us to conclude Claimants were adequately put on notice as to the nature of the Investigation.

Secondly, the Organization submits Carrier failed to prove its charge against Claimants. With respect to Claimants Taylor, Jones and Kenyon, there is no doubt that the Hearing established they left work without requesting or receiving permission from the appropriate supervisor. Claimant Blosser earlier, at approximately 1:00 A.M., had received permission to leave from Foreman Cramer, but that permission was granted because he would be leaving with someone else. When the other employees left without Blosser, he did not renew his request. Given the passage of time, it cannot be assumed Blosser still had permission to leave at 7:00 A.M.

Thirdly, the Organization argues Claimants absented themselves from duty for justified cause. We do not agree. The fact that it was cold and raining, and because Claimants had been on duty for 24 hours, did not excuse them. They were performing emergency service and could not be spared. It is likely their departure caused their fellow employees to work harder and/or longer. We must defer to the principle of "obey now, grieve later." There is no indication Claimants' safety was seriously and immediately threatened by their continuing at work. Consequently, they were not free to desert their assignments.

Finally, the Organization states the discipline imposed was excessive. Again, we do not agree. Given their action, as well as the fact that the three 60 day suspensions were subsequently reduced to 26 days, we cannot find the discipline unreasonable.

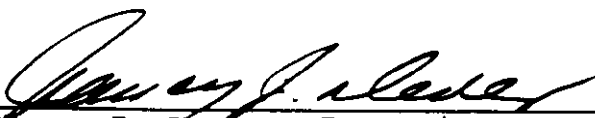
For the reasons stated herein, we find the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.