

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33020
Docket No. MW-33906
99-3-97-3-409

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Grand Trunk Western Railroad Incorporated

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [five (5) day suspension] imposed upon Foreman R. R. Paredes for alleged falsification of payroll reporting records of Machine Operators G. Luperena and W. Brocht and/or failure to properly perform his duties on August 8, 1996 was without just and sufficient cause and on the basis of unproven and disproven charges (Carrier's File 8365-1-557 DTS).
- (2) As a consequence of the aforesaid violation, the Claimant shall be compensated for all wage loss suffered and his record shall be cleared of the charges leveled against him.”

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 were given due notice of hearing thereon.

On August 6, 1996, two Machine Operators were each 30 minutes late reporting for work, but the Claimant reported them as working ten hours each on the payroll record. On August 14, 1996, the Claimant was notified to appear for an Investigation on August 22, 1996, concerning his alleged falsification of payroll records and/or failure to perform his duties properly. The Investigation was postponed to and held on September 16, 1996. On October 15, 1996, the Claimant was advised that he had been found guilty of the charge and was assessed a five day suspension.

The Organization maintains that the Carrier failed to prove the Claimant's guilt. The Organization concedes that each Machine Operator reported to work 30 minutes late. However, the Organization maintains that the gang worked through their lunch period and, thus, were entitled to be paid for the 30 minute lunch period. Therefore, the Claimant properly reported the two Machine Operators as entitled to ten hours pay. The Carrier disputes the Organization's version of the events.

The Board reviewed the record carefully. Essentially, the Claimant's guilt turned on the credibility of his testimony that he reported each Machine Operator as having worked ten hours because they worked through their lunch periods. As an appellate body, we defer to the credibility determinations made on the property as long as they are not clearly erroneous. In the instant case, we see no reason to disturb the decision on the property not to credit the Claimant's testimony.

First, we observe that the Supervisor initially asked the Claimant why he paid the Machine Operators for ten hours. The Claimant replied that the Supervisor had not instructed him to dock their pay. The Claimant's contention that he paid them because they worked through their lunch periods was raised at the Hearing, but not when his actions were originally questioned.

Second, we observe that if the gang had worked through the lunch period, Claimant himself and other employees would have been entitled to an extra 30 minutes compensation. However, the Claimant did not report that extra 30 minutes for any of those employees or for himself. Furthermore, the Claimant was unable to give a reasonable explanation for his failure to do so.

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The Carrier's finding of guilt is supported by substantial evidence in the record. Accordingly, there is no reason to disturb the discipline.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of January 1999.