Award No. 16273
Docket No. TE-15417

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pennsylvania Railroad, that:

1. H. E. Zweifel, regularly assigned block operator at High Street Block Station, Columbus, Ohio, was not guilty of any violation or deliberate malicious destruction of company property when he broke two windows at High Street on July 17, 1963, while trying to ventilate the office; and his dismissal later reduced to suspension for ninety (90) days, was arbitrary, capricious and unsupported by any evidence.

2. H. E. Zweifel was not guilty of any violation when he reported sick on July 18, 1963, and the suspension of ten (10) days was arbitrary, capricious and unsupported by any evidence.

3. Carrier shall compensate H. E. Zweifel for all time lost from his assignment at High Street from July 19, 1963, until restored to duty on November 1, 1963, and his record cleared of the charges accordingly.

OPINION OF BOARD: Claimant H. E. Zweifel, a Group 2 block operator, was assigned to work at the High Street Block and Interlocking Tower in Columbus, Ohio on July 17, 1963. On that date he broke two window panes in an effort to improve ventilation and reduce the temperature in the tower.

On July 18, 1963 he telephoned to ask permission to be off duty. When permission was refused he marked off sick.

On July 19, 1963 he was advised that he was being held out of service pending trial and decision for destruction of company property, and marking off sick after being refused permission to lay off.

Investigations and trials were held in both cases. On October 4, 1963 it was ruled that Claimant was guilty, and ultimately given a penalty of 90

days' suspension for willful destruction of company property and ten days' suspension for marking off sick to avoid working an assigned position.

The Carrier contends that Zweifel willfully and admitedly broke two windows in the tower, that this constituted destruction of company property, which is a major offense, and justified holding the employe out of service pending investigation and determination of the case. It argues that the penalty was appropriate and should not be changed. Similarly, in the case involving marking off sick, the Carrier argues that this was an afterthought to avoid working an assigned position, and properly penalized with a ten day suspension.

The Organization contends that the window breaking was not malicious, but in the case of one panel, accidental, and in the case of the second pane, removal of a piece of an already cracked pane. It argues that the conditions in the tower were oppressive, that no effort had been made despite earlier complaints to improve ventilation, that the damage done was minimal, and that in view of the Claimant's past record of 22 years of good service to the Carrier, the penalty was unwarranted and excessive. On th sick call charge the Organization points out that Claimant had told witnesses of his groin condition on July 17th, and that although he first phrased his request as one for being laid off, it was really for reasons of his sickness. In this regard, too, the Organization argues that the penalty is excessive.

In regard to the window breaking charge, it is clear that Zweifel did willfully break at least onepane of glass; that that constituted destruction of company property, justifying his being held out of service; and that a penalty for his action is warranted. However, we are unable to agree that the Carrier's penalty was appropriate. In view of the untarnished 22-year record of this employe, the fact that improvement in the tower facilities had been requested but unacted on, the oppressive heat of the day in question, the inability to open either window in routine fashion, and the minor extent of the damage done, we find that the penalty imposed on this charge was excessive and should be reduced to 30 days.

In regard to the calling-in charge, we find that Claimant had in fact told the assignment Operator that he was galled in the groin and "could not sit down", that there is no evidence to contradict that this condition precluded his working on July 18th, that despite initial refusal to lay off, he was entitled, in the circumstances of this particular case, to mark off sick, and the discipline imposed on this charge was unwarranted.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated to the extent indicated in the Award.

AWARD

Claim sustained to the extent indicated in the Award.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of May 1968.

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