

Award No. 16826  
Docket No. SG-15805

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

Claude S. Woody, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**  
**ERIE-LACKAWANNA RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie-Lackawanna Railroad Company:

(a) Carrier disciplined Signal Foreman H. S. Reinhart — in violation of Rule 60 of the Signalmen's Agreement — for alleged company rules violations on September 17, 1963.

(b) Carrier terminated Mr. Reinhart's 1963 vacation on September 24, 1963, and improperly paid him for part of his 1963 vacation — violation of the National Vacation Agreement.

(c) Carrier be required to restore all rights to Mr. Reinhart; pay him for the remainder of his 1963 vacation at the Signal Foreman rate of pay; pay him for fifteen (15) days' actual lost time commencing September 24, 1963; and allow him all compensation lost until such time as this matter is corrected.

[Carrier's File: 101.4 Item 110]

**OPINION OF BOARD:** At about 1:30 P. M., September 17, 1963, Signal Gang Foreman H. S. Reinhart, hereinafter referred to as Claimant, was found asleep on duty in Signal Gang Camp Car 54017 located at Creston, Ohio.

Under date of September 23, 1963, Claimant was notified to appear for hearing to be held at 9:00 A. M. (E. S. T.), Division Engineer's Office, Marion, Ohio, September 30, 1963. The hearing was held as scheduled; Claimant was notified on October 10, 1963, that he was disciplined "Fifteen (15) working days actual suspension and disqualification as signal foreman and from any other position except in signal construction gang due to alleged violation of Rule 0-1 and 0-4, account sleeping in Camp Car during working hours Tuesday, September 17, 1963, at Creston, Ohio."

Under date of January 31, 1966, the parties jointly advised the Board that that part of the claim involving the Claimant's vacation in 1963 had been resolved. Claim (b) and that part of claim (c) pertaining to pay for Claimant's 1963 vacation therefore will be dismissed.

We are unable to find from the record before us that the Claimant was denied a fair and impartial hearing in violation of agreement Rule 60, nor can we hold that the Carrier failed in its burden to prove an infraction of its rules by the Claimant.

The Board has held that it will be reluctant to upset discipline imposed by the Carrier unless it is evident that it is unreasonable or in abuse of discretion. We find here that discipline assessed was unreasonable. In Award No. 16065 we said:

"Many factors may be considered in deciding how much of penalty is reasonable for a particular offense by a particular employe. Among them is an assessment of the potential corrigibility of the particular employe which may be judged from his whole record and from how he conducts himself in connection with the particular offense with which he is currently charged; and comparison with penalties assessed other employes similarly situated; and the effect of the offense and the penalty on operations and on other employes. Thus, for instance, it was reasonable in this case for Carrier to consider Claimant's dishonest reactions when he was first faced with the discovery by Carrier of his dereliction: it was relevant to the question of how much punishment might be required to achieve the desired corrective result.

The only standard offered by the Organization was that the cost of repairing the damage which actually resulted from the cutting of the hose did not exceed \$1.00, while the discipline invoked lost the Claimant over \$1,500.00; on this basis the Organization argues that the discipline was 'cruel and excessive' for 'such a trivial offense.'

While the comparison offered by the Organization is relevant, the weight of the offense cannot be judged on that basis only; in this case there was no charge that the Claimant was taking the hose for his own use; had that been the charge, the cost comparison would have greater weight proportionate to other proper considerations in measuring the amount of penalty. But what we have here was a demonstration by a foreman of irresponsibility in his attitude toward the proper, safe and efficient operation of the railroad, together with an attempt by him, when he was first faced with the discovery of his dereliction, to avoid the consequences — i.e.: to avoid correction.

Under all of the circumstances, while, if the original decision as to the amount of penalty needed were ours, we might well have imposed a lesser penalty, and while we believe the ninety day suspension was extreme, in the absence of any other basis for comparison supplied in the record before us, we cannot find that it was beyond reason."

In this case, the record indicates that the discipline is continuing in nature. Our review of the entire record reflects no other disqualifying incidents during Claimant's employment, and therefore, it is our opinion that the discipline imposed will exceed the bounds of reason, if permitted to continue. We order the discipline terminated. Claimant's Foreman rights, including his original seniority date and rank in Foreman's class, are to be immediately restored, without compensation for lost time or earnings. We

withhold Claimant's right to displace on a Foreman's position until such time as he shall have again been assigned by bulletin to a new position or vacancy in that class.

**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 Employees involved in this dispute are respectively Carrier and Employees 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 opinion.

#### **AWARD**

Claim sustained to the extent indicated in opinion and findings.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **THIRD DIVISION**

**ATTEST:** S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1968.