

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20587
Docket Number SG-20644

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company that:

Mr. J. T. Harrell, Assistant Signalman, who was dismissed from service following formal investigation concluded at Bay City, Texas, on April 25, 1973, was not afforded a fair and impartial investigation, and was improperly withheld from service from April 9 to May 3, 1973, in violation of Rule 700(b), should now have his personal record cleared of the charge, be promptly reinstated to his former position with full pay for time lost and with seniority, vacation, and all other rights unimpaired.

[Carrier's File: D 225-635]

OPINION OF BOARD: Claimant, on two occasions, requested a leave of absence. He falsified the reason for the request to both Supervisors. Although both requests were denied, nonetheless, he absented himself from duty (without authority) on April 2, 3, 4, 5 and 6, 1973.

Claimant urges that he did not receive a fair and impartial investigation. He refers to a remark made by the Hearing Officer when the initial hearing was postponed (at Claimant's request), and he argues that he should not have been withheld from service pending investigation.

We have fully considered the entire record, and the controlling Rules Agreement. We are unable to conclude that any of Claimant's substantive procedural rights were violated.

Claimant conceded, at the Investigation, that he did absent himself from duty during the week of April 2, 1973. Accordingly, the only question which remains deals with the quantum of punishment imposed.

Claimant's lack of candor is significant to our consideration. He was faced with a serious problem, and quite conceivably, a truthful disclosure to his Supervisors might have resolved the situation. Thus,

imposition of severe discipline was warranted. However, upon our consideration of the entire record, the Board concludes that permanent dismissal was excessive.

We are compelled to note that Carrier has presented a document to this Board, concerning quantum of punishment, which must be totally disregarded. At Page 6 of its Rebuttal, Carrier refers to Claimant's unsatisfactory work record, and attaches a November 19, 1973 intra-Carrier document. The Notice of intention to file an ex parte submission to this Board is dated November 30, 1973. There is absolutely nothing of record to suggest that the November 19, 1973 document, or its contents, were ever considered by the parties while the matter was under consideration on the property. The rather inflammatory contents of the document are not properly before us, as the well reasoned Rules of this Division render the document clearly inadmissible for our considerations.

Claimant shall be restored to duty, with seniority and other rights unimpaired, but he shall not be entitled to compensation for time held out of service.

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.

A W A R D

Claim sustained to the extent stated in the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 17th day of January 1975.