

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20947

Docket Number MW-20989

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when Machine Operator R. D. Harrelson was removed from service on April 30, 1971 and when the Carrier thereafter assessed his personal record with twenty (20) demerit marks without just and sufficient cause. (System File 130-187-44)

(2) The Carrier shall now allow Claimant Harrelson pay at the Machine Operator's straight-time rate from May 3, 1971 through May 25, 1971.

(3) The twenty (20) demerit marks be expunged from Claimant Harrelson's personal record.

OPINION OF BOARD: This is a disciplinary dispute in which Petitioner first raises a number of procedural questions. First it is alleged that Carrier's unilateral postponement of the hearing on the date first scheduled, after Claimant and his representative appeared, warrants voiding of the charges and subsequent disciplining. It is noted that a postponement took place, however, the hearing was held within the time limit provided in Article V, Section 2, and that Claimant's position was not prejudiced in any way by this action. This contention by Petitioner must be rejected.

Claimant next argues that the charges were vague and unspecific in that they only alleged "failure to comply with Rules 16, 17 and 18 of the General Rules for the Guidance of Employes." It is argued that this notice gave no indication of what date or under what circumstances the rules were violated. A careful examination of the record clearly demonstrates that Claimant and his representative, partly as a result of the suspension prior to the hearing, had ample knowledge of precisely what the problem was and did indeed prepare for and defend against the charges. They were not precluded from adequate preparation by lack of knowledge or imprecision in the charges; we have consistently held that under such circumstances the charges are adequate.

Several other procedural arguments were raised by Petitioner including prejudgement, the refusal of the hearing officer to answer a hypothetical question and "hearsay" evidence. We find no merit in any of these contentions.

The principal issues in this dispute are whether Claimant was properly suspended prior to the hearing and whether or not his guilt was established in the course of the investigation. The Rules provide in Article V, Section 2:

"It is understood that nothing in this Article will prevent the supervisory officer from holding men out of service where flagrant violations of Company rules or instructions are apparent, pending result of investigation which will be held within thirty (30) calendar days of date of suspension."

Claimant was suspended by Carrier and subsequently reinstated on the day following the completion of the investigation; the suspension as well as the demerits (subsequently removed) constituted the penalty imposed by Carrier. In short, the penalty finally was a seventeen day suspension. The record indicates that the two specific incidents involved in the disciplining were the alleged unauthorized absence and the altercation with the foreman, termed insubordination. Are these two incidents "flagrant violations"? Clearly it would be a marginal question unless the act of insubordination was such as to justify the suspension. It is apparent that tempers were high and intemperate comments were made at the time of the discussion between Claimant and the Foreman. We are persuaded that under all the circumstances, in order to maintain discipline, the foreman was within his rights in suspending Claimant pending the investigation.

On the question of the merits there is no doubt that Carrier produced evidence in support of the charges. Claimant did not report his intended absence to "proper authority" as required by the rules; his conversations with the Student Foreman, if credited, were not sufficient to meet his obligation. Further, Claimant did not deny that he had made statements to the Foreman that he would take time off any time he felt he had good cause - and he did not state he would seek permission for such actions, in spite of the Foreman's comments to him. We must conclude that the conclusion of guilt was well founded and the penalty was not arbitrary or excessive. The Claim must be denied.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1976.