

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21398
Docket Number MW-21335

Walter C. Wallace, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Norfolk and Western Railway Company (Western Region)

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

(1) The suspension of Assistant Foreman Floyd Rowry for thirty (30) days on the charge of "failure to comply with instructions" was excessive and without just and sufficient cause and on the basis of unproven and disproven charges (System File NW-DET-74-3).

(2) That the remedy prescribed within Agreement Rule 20 (g) now be afforded to Claimant, said rule reading:

"If the charge against the employee is not sustained, it shall be stricken from the record. If by reason of such unsustained charge the employee has been removed from position held, reinstatement will be made and payment allowed for the assigned working hours actually lost while out of the service of the railroad company at not less than the rate of pay of position formerly held or for the difference in the rate of pay earned, if in the service or otherwise employed."

OPINION OF BOARD: The Carrier raises a question as to the propriety of this appeal in view of the fact complainant did not process his appeal in accordance with Rule 20 (f). That rule requires that notice of appeal must be given to the official rendering the decision. Originally, carrier asserted an objection that the claim was "not handled in the usual and customary manner as prescribed by Section 3, First (i) of the Railway Labor Act." Carrier's reference to Rule 20 (f) was first made before this Board. As we view this rule requirement, carrier could have waived this objection. For some reason it chose to make its objection on the broader basis of the more general provisions of the Railway Labor Act. We believe this is too vague a basis to operate as a disqualification of this appeal. Further, the July 5, 1974 letter of appeal indicates a copy was sent to the appropriate official and we do not believe Rule 20 (f) requires more in this connection.

On the substantive issue the claimant was charged with failing to follow instructions. Presumably claimant could have been faulted for an unauthorized absence from his work location and his failure to respond

to his superior's questions as to the reasons for his absence. With respect to the former question there is a conflict of evidence regarding claimant's whereabouts during the period 10:30 a.m. to 11:30 a.m. on May 16, 1974.

The testimony of Supervisor Dietrich and Mr. Cipponeri (the claimant's supervisor and the crane operator claimant supervised, respectively) supports the decision reached that claimant failed to comply with instructions and was absent from the workplace during the period described. In addition, claimant's own testimony indicates he had full understanding of his work assignment even though he did not agree with the assertions as to his absence. With respect to claimant's failure to respond to his supervisor's questions as to his location, that assertion is based upon the testimony of the supervisor and claimant neither denied or refuted that contention in his testimony.

The official charged with the conduct of the investigation reached his conclusion based upon substantial evidence in the record and under these circumstances this Board cannot substitute its view of the evidence and must defer to the decision reached. We conclude, therefore, there was just and sufficient cause for the charge that grievant failed to comply with instructions.

With respect to the penalty imposed, 30 days suspension, it cannot be said to be arbitrary, capricious, or discriminatory. Claimant had been in service for over 20 years, including five or more years as an Assistant Section Foreman. It must be assumed he knew the seriousness of such a violation.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

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Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1977.