NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21598
THIRD DIVISION Docket Number MW-21730

Robert W. Smedley, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Terminal Railroad Association of St. Louis

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

(1) The Agreement was violated when Track Laborers Jerry Carothers, Dominic Vitale and Bernard Mitchell were each withheld from service for one work day without just and sufficient cause and without benefit of the procedure stipulated in Agreement Rule 24 (Carrier's Files 013-293-21 and 013-293-25; General Chairman's Files TRRA 1974-35, TRRA 1975-4 and TRRA 1975-5).

(2) Each of the aforenamed employes be allowed eight (8) hours' pay at their straight-time rates.

OPINION OF BOARD: The claimants were late for work, Mitchell and Vitale on February 3, 1975, and Carothers on October 31, 1974. They were not allowed to work and were each docked one day's pay.

Rule 25 of the Agreement provides that an employee:

"* * * will not be suspended or dismissed without being given a fair and impartial hearing * * *"

The General Rules provide:

"P - Employes must report at the appointed time * * *"

No hearings were held. The record consists of the submissions, the various claim and denial letters, the Agreement and the rules. From this it is gleaned (1) that the claimants were a few minutes late, (2) that they apparently were not late enough to disrupt work or delay the crew had they been allowed to work, and (3) the carrier had a long standing policy of not allowing the tardy to work, which policy was discussed on the property.

A sort of rule has been fashioned through Third Division Awards No. 7210, 20153 and 20274, to the effect that when there is a contract clause requiring a hearing or investigation prior to discipline, withholding from service one day without an investigation is allowable if the employe is severely late, in effect withholding himself from

service, but not if he is slightly late so as not to disrupt business. The latter case is considered discipline for tardiness.

In Award No. 7210 the record did not contain information as to the customary practice on the property. Here there was a customary practice. This is not without dispute, the employes saying that others who were late were allowed to work and the carrier stating that this is allowed only when prior arrangements are made or due to inclement weather. There is also argument that the workers were stopped by trains and were on the property on time. The carrier says there are two entrances and the train blockage could have been avoided. The workers were admittedly not at the work station on time.

We find that when there is an established rule, practice and reasonable penalty against tardiness one day suspension is allowable without a hearing. There is one way to avoid being late and that is to start on time. Being train blocked is certainly not an unpredictable happenstance for one headed to railroad work. We fail to see how a tardiness rule can be administered by formally hearing every case. By rights, the hearing would have to be before work started to determine if there was a good excuse or not, thus delaying the workday further for all.

And we would not deem it fatal to the rule if one late worker was allowed to work and another not, depending upon the particular needs and circumstances that day, loss of one day being the forewarned risk of lateness. Of course, this must be applied evenhandedly.

We are not unmindful that this rule is serious and could represent the car payment or food. But in this context we do not countenance the unseemly exercise of going back and forth on what a fine work record somebody does or does not have, or whether someone was four or fourteen minutes late. The only factual issues are time and place. If the carrier is mistaken on one or both of these issues the matter can be heard later for one day's pay.

The organization expresses concern that if this rule is allowed to stand then short term suspensions can be unilaterally invoked for all sorts of things - purported insubordination in the field, or whatever. This does not follow, the rule applying to this circumstance only.

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

The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1977.