

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22723
Docket Number SG-22495

Kay McMurray, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company:

On behalf of Leading Signaller F. A. Dickie for pay for all time lost as a result of a forty-five day suspension effective September 21, 1977, and on behalf of Signaller G. A. Olsway for removal of thirty demerits assessed effective October 6, 1977." [Carrier files: 011-181 (D), 011-222 (O)]

OPINION OF BOARD: There is no dispute with respect to the facts in this case. On September 20, 1977, the Claimants were serving as Lead Signaller and Signaller, respectively, at the Carrier's property in Salinas, California. Early in the morning, a verbal confrontation ensued over the dirty condition of one of the Carrier's pickup trucks. Shortly thereafter, Claimant Dickie was granted permission to take the day off in order to regain his composure. At approximately 4:00 p.m. that afternoon after Claimant Olsway had completed his work assignment and was walking through the gate to leave the property, he was accosted by Mr. Dickie and a physical altercation took place which resulted in the necessity for several stitches below the right eye of Mr. Dickie and relatively serious injury to the left elbow of Mr. Olsway.

Appropriate notices were sent and a hearing was conducted on September 28, 1977. As a result of the hearing, the penalties herein complained of were assessed on October 6, 1977.

As justification for the penalties, the Carrier relies upon the following Rules:

801 - "Any act of hostility...is sufficient cause for dismissal

802 - "Courteous deportment is required of all employees in their dealings with...their subordinates and each other."

In defense the Organization alleges a procedural error regarding the application of Rule 59(b) which reads: "If discipline is to be assessed a transcript of the testimony taken at the investigation shall be furnished to the employee under charge and his representative within ten (10) calendar days after the close of the investigation." They point out that the local chairman did not receive his copy until October 11, which is beyond the 10-day time limit. However, the record indicates that a copy of the transcript was mailed to him on October 6, the same day the discipline letters were acknowledged by the grievants. It is a well settled principle of law upheld by this Board on numerous occasions that the date of mailing is utilized for the purpose of determining compliance with such time limits. The mailing date was within 10 days as required and this Board must rule that Rule 59(b) was not violated.

The Organization further contends that the investigation is flawed by the absence of at least one important witness. The transcript of the hearing reveals that the Organization was asked on two separate occasions whether it desired additional witnesses. The responses were in the negative. Since ample opportunity for additional witnesses was given at the investigation, the Organization cannot raise such objection after the investigation is concluded.

It is generally true, as claimed by the Organization, that actions off the property must have careful scrutiny before any penalty can be assessed.

In the case at bar, however, the altercation took place just a few feet from the gates of the company premises and in full view of all employees who were going off shift. Under such circumstances, the rules quoted in this opinion might be seriously weakened if they were not applicable.

All employees, as well as the Carrier, have an interest in assuring that human relations in and around the work place are kept as harmonious as possible. The actions of the Claimants militated against that objective. This Board finds that some disciplinary action was merited.

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;

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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:


Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1980.