

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23057
Docket Number CL-23001

George S. Roukis, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station Employees
{ The Belt Railway Company of Chicago

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8860) that:

1. Carrier violated the effective Clerks' Agreement when, following an investigation on June 9, 1978, it suspended Clerk H. Patton from service for a period of sixty days without just cause:
2. Carrier shall now compensate Mr. Patton for all time lost as a result of this suspension from service, including loss of July 4, 1978, holiday pay and all lost overtime potential earnings, and shall clear his record of the charges placed against him.

OPINION OF BOARD: An investigation was held on June 9, 1978 to determine whether petitioner improperly claimed excessive overtime on May 14, 1978. Carrier found him guilty of submitting a falsified time claim and suspended him from service for sixty (60) days effective June 14, 1978. This disposition was appealed on the property pursuant to Agreement Rule and is presently before this Division for review.

Before proceeding to an analysis of the substantive issue that is contested, this Board will consider the procedural objection raised by Claimant regarding the conduct of the investigative proceeding. Claimant contends that he was not afforded a fair and impartial trial consistent with the intent and spirit of Rules 25 and 26, since the May 26, 1978 Notice of Investigation did not delineate precise charges, thus precluding him from preparing and conducting a rigorous and competent defense. He claims that the notice was vague and ambiguous. We do not agree. Careful reading of the notice shows that it was sufficiently worded to permit a reasonable opportunity to respond to the primary focus of the investigation. There were no due process improprieties.

Claimant was found guilty of an offense that is intolerable in this industry. He was charged with falsifying his time record. The amount of time improperly claimed, ten (10) minutes, was admittedly minimal. But, in principle, it was serious. The investigative record indicates that he should have been relieved from his duty tour at 3:00 PM. But he was not relieved until about 3:50 PM. His decision to remain on duty beyond 3:00 PM was consonant with accepted practice. That is, he remained at his station until relieved. Claimant contends that Carrier should have disallowed his time claim rather than to charge him with this offense. In fact, the Organization asserts that it was inconceivable to think that a person with thirty years of unblemished employment would contemplate such action. It averred that his time claim was mistakenly prepared.

Contrawise, Carrier contends that he was "disgruntled" for having to work beyond his tour duty. It asserts that the relieving clerk discovered this discrepancy when he checked with the chief clerk to verify the actual time he started work. It contends that his overtime claim was not inadvertently prepared, but instead reflected a wilful response to his having to work beyond 3:00 PM.

In our review of this case, we concur with Carrier that theft of time is a serious offense, irrespective, of the amount improperly claimed. The record shows that he claimed an additional ten (10) minutes of overtime. But (we do not find a calculated design or motive for his department.) If he were relieved on time, the issue would be moot. Certainly, it is difficult to conceive how a person with an exemplary work record would contemplate such action. He was mindful that it is severely punished in this industry. He was never disciplined or reprimanded in the past. Of course, the time claim speaks for itself, but (it cannot be firmly established that he willfully falsified it.) Similarly, it is difficult to conclude, as Carrier has done in this instance, that the late relieving clerk precipitated this response. The cost-benefit gains are patently incongruent. (At best, we have a presumption.) This finding does not warrant a sixty (60) day suspension penalty, especially where as here the evidence doesn't support willful theft. (A correlative presumption exists that he could have mistakenly prepared the time claim. Accordingly, we will reduce the aforesaid penalty to a letter of reprimand, which we believe is justified to impress upon him the importance of accuracy when preparing such claims.) He should have exercised a greater degree of diligence when he prepared the overtime claim and this disciplinary modification will best serve the purpose of insuring that it will not happen again. The original penalty was too excessive for this employe when all the facts and circumstances are judicially considered.

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 violated to the extent expressed herein.

A W A R D

Claim sustained to the extent expressed herein.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November 1980.