

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23262  
Docket Number MW-23357

Carlton R. Sickles, Referee

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees  
(  
(Missouri-Kansas-Texas Railroad Company

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

(1) The discipline assessed Machine Operator Homer Warren, Jr. for alleged insubordination was without just or sufficient cause and on the basis of unproven charges (System File 100-163/2579-23).

(2) Machine Operator Homer Warren, Jr. shall have his record cleared of the charge leveled against him."

OPINION OF BOARD: Claimant was suspended from service by the Carrier for a period of ten days for failure to report to work at the designated time on a Saturday morning. Such suspension was deferred for a period of twelve months, meaning that the claimant would not be required to serve the deferred suspension unless within the twelve-month period, he were found guilty of additional rule violations. The entry of the deferred suspension does remain on the claimant's record.

The claimant alleges that he did not hear the foreman issue instructions to work on Saturday and since Saturday is not normally a working day, he did not report for work. A review of the pleadings and the testimony indicates that the claimant relies upon his own testimony as well as the supporting testimony of one employe who indicated that when the foreman gave him instructions, he said that the employes were through for the day and could go home. He did not, at that same time, instruct them to report to work at 8:00 the following morning. This witness also stated that it was possible that the claimant had not heard the subsequent instructions to report the following morning because he might have been a distance away from the foreman.

The foreman testified that he instructed all the employes to report the following morning, including the claimant, and another employe testified that the claimant was present when the foreman gave his instructions to report to work the following morning. The employe supporting the claimant's contention indicated that he could not state that the claimant was not instructed to work because there was some discussion by the employes of the instructions they had received. He also stated that it was normal for the employes to ask the supervisor for instructions.

Under the circumstances, there is ample evidence to conclude that the instructions were issued to all employees, including the claimant, and that, therefore, under these circumstances, the discipline which was imposed is reasonable.

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. Paulson  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1981.

