

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23294
Docket Number MW-23421

John B. LaRocco, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Fort Worth and Denver Railway Company

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

(1) The Agreement was violated when Trackmen M. Watson and B. L. Marruffo were each withheld from service for one work day without just and sufficient cause and without benefit of the procedure stipulated in Agreement Rule 26(a) (System File F-14-79/G-90 (MW)).

(2) Trackmen M. Watson and B. L. Marruffo each be allowed eight (8) hours of pay at their straight time rates."

OPINION OF BOARD: The two claimants, trackmen, reported to work approximately three to five minutes late on February 22, 1979. Neither claimant was permitted to work the remainder of his shift and they lost eight hours wages for that day. Due to an increase in the instances of tardiness, the Section Foreman had orally told all workers under his supervision that any employee who reported to work late (without providing prior notice and for good cause) would not be allowed to complete his shift. Both claimants seek eight hours of straight time pay for February 22, 1979.

The Organization's primary argument is that the Foreman's refusal to allow the claimants to work their assignment on February 22, 1979 constituted discipline which triggered the claimants' due process right to an investigation under Rule 26(a). Since a penalty was assessed without notice or a hearing, the Organization argues, the Carrier is obligated to compensate the claimants for the lost wages. The Carrier argues that the Foreman's action was not discipline but he was merely carrying out his prior warning i.e. if employees continued to report late, they would be prohibited from working. The Carrier asserts that the Organization has failed to point to any rule in the Agreement to support the claim. The issue is whether the foreman's action was tantamount to discipline.

We take notice that this precise issue involving these same parties was recently adjudicated in Third Division Award No. 22904 (Scheinman). In that case we ruled that where there had been prior warnings, the Carrier's refusal to permit tardy employees to work was not tantamount to discipline. Employees who report to work late without advance notice are in a tenuous position to demand the right to

complete their assignment. The Carrier is under no obligation to keep their assignment open. Second Division Award No. 7384 (Marx). For the reasons expressed in the decisions we have cited, we must deny the claim.

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. Paulose
Executive Secretary

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

