

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23925  
Docket Number SG-23914

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen  
{ Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad:

On behalf of Signalman W. A. DeWoody, Signal Gang 1011, Hope, Arkansas, for payment of all time lost from September 26, 1979, until October 26, 1979, and that his record be cleared of any reference to this matter, account improperly suspended from service following formal investigation held at North Little Rock, Arkansas, on September 20, 1979, in connection with his alleged responsibility for being absent without proper authority from 6:30 p.m. August 31, 1979, until 11:59 p.m. September 1, 1979." (Carrier file: K 225-829)

OPINION OF BOARD: Claimant, W. A. DeWoody, after investigation, was suspended for a period of thirty (30) days. Claimant was charged with being absent without authority from his regular relief assignment as Signal Maintainer, Texarkana, Texas on August 31, 1979. Specifically, Claimant was found guilty of refusing to notify his supervisor or the dispatcher of his whereabouts and failing to respond to trouble calls on August 31 and September 1, 1979.

The Organization contends that Carrier failed to meet its burden of establishing Claimant's guilt. It also asserts that Claimant's procedural rights were violated. 2

A careful review of the transcript convinces us that Claimant is guilty as charged. He did violate Rules M and W. On this there can be really no dispute.

As to the Employees argument that Claimant was not afforded a fair and impartial hearing, we find that there is no basis for such a claim. Nothing in the record indicates that Claimant's due process rights were violated. To the contrary, we are persuaded that the hearing was conducted in an evenhanded manner. Surely, a suggestion that an employee accept some degree of penalty without a hearing does not indicate that the hearing held, once that offer is rejected, is biased.

Thus, Claimant is guilty as charged. The final question that remains is the penalty imposed.

Claimant was assessed a thirty day actual suspension. This Board has consistently held that the penalty imposed by Carrier will not be overturned unless it is arbitrary, capricious or unreasonable.

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Here, we are convinced that the penalty is excessive. It is not corrective; it is punitive. Therefore, we shall reduce the penalty to a fifteen day suspension. Claimant shall be made whole for the period of his improper suspension consistent with the terms of the Agreement.

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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of June 1982.

