

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24523
Docket Number MW-24404

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Seaboard Coast Line Railroad Company

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

(1) The fourteen (14) calendar days of suspension imposed upon Trackman J. L. Morgan for alleged violation of Agreement Rule '17(B)', 'Rule 18 of the Safety Rules for Engineering and Maintenance of Way Employees and General Rule 2 of the Safety Rules for Engineering and Maintenance of Way Employees' was without just and sufficient cause, unwarranted and an abuse of justice and discretion by the Carrier (System File C-4(13)-JLM/12-39(80-37) G).

(2) The claimant's record be cleared and he shall be compensated for all wage loss suffered during the period March 24, 1980 through April 6, 1980."

OPINION OF BOARD: Following an investigative hearing conducted in a fair and proper manner, Claimant was assessed a 14-day disciplinary suspension for his failure to report for work when called at 1:30 a.m. February 19, 1980 in connection with a derailment.

The Carrier determined that the Claimant was guilty of violating the following rules:

Rule 17(b) - From Working Agreement between SCL and BMWE

"(b) An employee desiring to be absent from service must obtain permission from his foreman or the proper officer. In case an employee is unavoidably kept from work, he must be able to furnish proof of his inability to notify his foreman or proper officer."

Rule 2 - General Notice - From Safety Rules for Engineering and Maintenance of Way Employees.

"2. Obedience to the rules is essential to Safety."

Rule 18 - From Safety Rules for Engineering and Maintenance of Way Employees.

"18. Disloyalty, dishonesty, desertion, intemperance, immorality, vicious or uncivil conduct, insubordination, sleeping on duty, incompetency, making false statements, or concealing facts concerning matters under investigation, will subject the offender to dismissal."

The charges are based on the record of the investigative hearing, in which a Carrier Foreman was questioned concerning his call to the Claimant. The Foreman's testimony was as follows:

"Q. When you were notified of this derailment, did you contact Mr. Morgan?

A. Yes sir.

Q. And what did he tell you?

A. Told me his driver's license had been revoked.

Q. Were you aware of that prior to this time?

A. Yes sir.

Q. How long ago had it been revoked?

A. Ever since he's been working for me."

The Carrier's case here is primarily one of an employee's failure to report for duty when called (i.e., unexcused absence) -- rather than insubordination. According to the Foreman's testimony, the Claimant stated he would not report for work based solely on his inability to drive his car at the time. There is no inference that the Foreman gave "permission" for the Claimant to be absent. On the other hand, the Board detects no direct refusal to obey a proper order, which would be the only basis on which a charge of insubordination could be sustained here.

As brought out at the investigative hearing, however, the Claimant clearly made no effort to find an alternative way to report for work when called. He had good reason to know that a fellow employe on the same crew would be called and might have provided transportation, but the Claimant did nothing to investigate this possibility or to seek some other means of reporting to work.

The Claimant had been given a previous warning concerning "violation of Rule 17 (b)". Once the Carrier had reached its conclusion concerning the incident under review, reliance on the employee's record was proper in determining the severity of penalty.

The Board finds the Carrier's charge of insubordination does not fit the circumstances, but a disciplinary penalty based on violation of Rule 17 (b) is proper, insofar as it requires attendance when an employee is called to duty unless permission is otherwise granted.

Claim sustained to the extent that the disciplinary penalty shall be reduced to seven days and that the Claimant shall be compensated for wage loss for the remaining seven days.

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 Employes involved in this dispute are respectively Carrier and Employes 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:


Nancy J. Oever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of September, 1983.