

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24545  
Docket Number MW-24740

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(Louisville and Nashville Railroad Company  
( (former Chicago & Eastern Illinois Railroad Company)

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

(1) The thirty (30) days of suspension imposed upon Machine Operator C. R. Hamm for allegedly 'receiving pay for expenses claimed on June 6, 1980' and the dismissal of Machine Operator D. G. Maxfield for allegedly 'filing false reports for both you and Mr. Hamm' was without just and sufficient cause (Carrier's File D-107705).

(2) The claims as presented by General Chairman B. L. Watts on August 25, 1980 to Division Engineer J. A. Lamm, Jr. shall be allowed as presented because said claims were not disallowed by Division Engineer J. A. Lamm, Jr. in accordance with Rule 35(a).

(3) As a consequence of either or both (1) and/or (2) above

'Mr. Hamm be fully reimbursed for the thirty (30) days he was not permitted to work'

and

'Mr. Maxfield be returned to the service with full reimbursement and with all rights and privileges restored'."

OPINION OF BOARD: Claimants were employed as machine operators, and were assigned as such to operate brush cutting machines on Carrier's Evansville Division. Claimant Maxfield had about five years of service and claimant Hamm about four years. The claimants, along with two other machine operators, were assigned to a gang equipped with two brush cutting machines, each of which required two machine operators. Claimant Maxfield, being the head machine operator was responsible for reporting the time worked by the other operators. Claimants Maxfield and Hamm were notified to report for formal investigation at 10:30 A.M., July 10, 1980, on the charge:

"You are charged with violating that part of Rule 'G' of the Rules and Instructions of the Maintenance of Way Department relating to making false reports and receiving pay for time and expenses claimed while off the job on June 6, 1980."

The investigation was postponed by agreement and was conducted on July 22, 1980. A copy of the transcript of the investigation has been made a part of the record. A review of the transcript shows that the investigation was conducted in a fair and impartial manner. Claimants were present throughout the investigation and were represented. None of their substantive procedural rights was violated.

In the investigation it was developed, in fact claimant Maxfield so admitted, that neither he nor claimant Hamm worked on June 6, 1980, but that he reported eight hours work for himself and claimant Hamm, also that he claimed reimbursement for expenses for himself for June 6, 1980. Maxfield referred to the erroneous reporting of time for himself and claimant Hamm as an "honest mistake". In the investigation claimant Hamm stated that due to a death in his family, he made a sketch of his expense account, including June 6, 1980, and instructed Mr. Maxfield to fill out his expense form and authorized him to sign it.

On August 6, 1980, claimant Maxfield was notified of his dismissal from service as:

"Formal investigation conducted on July 22, 1980 revealed that you were guilty of filing false reports for both you and Mr. Hamm as charged and you were guilty of cashing checks for work you did not perform and for expenses you were not entitled to."

Also on August 6, 1980, claimant Hamm was notified:

"Formal investigation conducted on July 22, 1980 revealed that you were guilty of receiving pay for expenses claimed on June 6, 1980 while off the job.

In view of the above fact, this is to advise that you are assessed discipline in the amount of thirty (30) calendar days suspension from service without pay, starting August 7, 1980. You may return to work September 8, 1980."

The Board has carefully reviewed the entire record in the dispute and finds that discipline was warranted. In the case of claimant Hamm, thirty days suspension was not excessive; therefore, the claim in his behalf will be denied.

In the case of claimant Maxfield, severe discipline was warranted. However, considering that there is no record of prior discipline against him, and his straight-forward statement in the investigation, permanent dismissal was excessive. The time that he has been out of service should constitute sufficient discipline. We will award that claimant Maxfield be restored to service with seniority and other rights unimpaired, but without compensation for time lost while out of service.

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

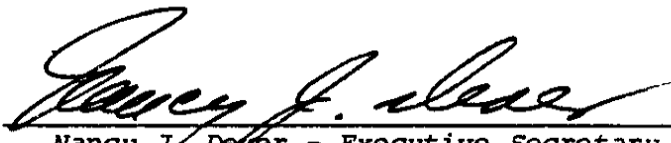
That the discipline imposed against claimant Maxfield was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1983