

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24742
Docket Number MW-24926

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Southern Pacific Transportation Company (Eastern Lines)

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

(1) The dismissal of Machine Operator W. D. Trahan for alleged violation of 'Rule 801' was without just and sufficient cause (System File MW-82-92/346-70-A).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The requirement for early submission of time rolls was in large part the source of the problems in this case. On the morning of Friday, February 12, Claimant was employed as a machine operator on a tie gang on the Port Arthur Branch. Soon after arriving at work at 7:00 AM he was instructed by his foreman that time rolls for the pay period were to be turned in that morning. At that time he expected to work the full day and made out his time roll accordingly. He gave his time roll to Assistant Foreman Richard at about 8:00 AM that same morning.

So far, so good. However, at approximately 9:30 AM Claimant received an emergency telephone notice that his infant son was ill and in the hospital. He was relieved by the foreman and took the balance of the day off. The following Monday was a holiday and was not claimed on the Claimant's time roll. The following week he did not return to work on the tie gang. Instead, he bumped on another job nearer his home. Claimant explained that in his excitement over the news of his son's illness he did not think about the time roll turned in to the foreman earlier that morning. He added that he did not think anymore about the matter until notified of his dismissal by the Company because his time roll had been falsified.

The circumstances of his termination are set forth in the Carrier letter of February 25, 1982, as follows:

"On February 12, 1982 at approximately 9:30 A.M. you were allowed to go home because of sickness in your family, however, on your first period time roll for February, 1982 you falsified your time; you posted nine (9) at pro rata rate on February 12, 1982. This is in violation of Rule 801 of the General Notice of the General Rules and Regulations effective April 1, 1982 of the Southern Pacific Transportation Company which read in part as follows:

'Rule 801. Employees will not be retained in the service who are ... dishonest ...'

For your violation of Rule 801 you are dismissed from the service of Southern Pacific Transportation Company effective February 26, 1982.

Please arrange to return any company property you may have in your possession to District Manager W. L. Franks at Beaumont, Texas."

A hearing was held on the matter on April 16, 1982, as required by the Agreement. Evidence indicates the hearing was conducted in a fair and impartial manner. Based on evidence adduced during the hearing it is clear Claimant did not intentionally falsify his time roll. It is moreover, understandable that on receiving a call that his infant son was ill he did not think to go to his foreman and correct the time roll prior to leaving for the hospital.

Prior to issuing its discharge notice on February 25, 1982, Carrier made no effort to check the circumstances but acted on the simple fact Claimant's time roll was for 9 hours and the records showed he worked only 2½ hours on the date in question. To this extent Carrier's action was somewhat arbitrary. At the same time, however, we must note also that Claimant made no effort to correct the time roll subsequent to the date in question and, as a result, he was paid for the full time claimed. Thus, where his original mistake was inadvertent he failed to act responsibly to correct the oversight. Moreover, he accepted full pay for the day without question. It was only during the hearing on April 16, 1982, that he offered to repay the monies due to his mistake.

Where Carrier proceeded without just cause in discharging Claimant without investigation of the circumstances, Claimant is also culpable for failing to take steps to correct his time roll error prior to being paid. His excitement on February 12 can be accepted for his failure to take corrective action on that day but what about the period of some two weeks when he could have taken corrective action by simply making a telephone call.

Carrier acted arbitrarily and without just cause in discharging Claimant without investigation and this must be accepted as mitigation against the discharge action. At the same time, however, Claimant is responsible for failing to take corrective action regarding his time roll. Whether his failure to do so indicates wrongful purpose or fraudulent intent is not established by the evidence at hand. It appears, on balance, that there is a measure of blame on both sides. Recognizing this, it is the Board's opinion the disciplinary action is unduly severe and should be set aside in favor of the period he has been out of service to be considered a disciplinary suspension without pay for time lost.

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

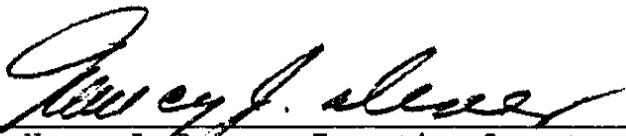
That the discipline was excessive.

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 30th day of March, 1984.