

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24780  
Docket Number MW-24832

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: ( Brotherhood of Maintenance of Way Employes  
( Toledo, Peoria & Western Railroad Company

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

(1) The thirty (30) days of suspension imposed upon Section Foreman H. R. Kissack for alleged "desertion from duty and improper preparation of Daily Work Reports for Wednesday, October 21, 1981" and his "disqualification as Foreman and any position above a Section Laborer's status" for allegedly sleeping on duty on October 29, 1981 was excessive and without just and proper cause.

(2) Mr. H. R. Kissack's seniority as track foreman, assistant track foreman and any other seniority above that of section laborer be restored and unimpaired and he shall be compensated for all wage loss suffered including the difference between what he would have received at the Section Foreman's rate and what he was paid as a section laborer until he is returned to work as a Section Foreman with seniority as such unimpaired.

OPINION OF BOARD: The instant case deals with two (2) specific incidents, each of which were subject of a separate hearing on November 13, 1981. In the first incident the Claimant, H. R. Kissack, was charged with alleged desertion of duty and improper preparation of Daily Work Reports for Wednesday, October 21, 1981 while he was assigned as Section Foreman at El Paso, Illinois. As a result of the investigation into this issue which started at 10:05 a.m. and finished at 10:55 a.m. on November 13, 1981 the Claimant was notified by the Carrier by letter dated November 19, 1981 that he was suspended from duty for thirty (30) days. In the second incident the Claimant was charged with allegedly being asleep on duty while covering his assignment as Section Foreman at El Paso, Illinois on Thursday, October 29, 1981 between 2:00 and 2:20 p.m. As a result of the second investigation which started at 1:30 p.m. and finished at 2:10 p.m. on November 13, 1981 the Claimant was notified by the Carrier also by letter dated November 19, 1981, that he was hereafter disqualified to hold the position of Foreman, or any other position above Section Laborer's status.

As a preliminary point the Carrier contends confusion of the issues here with respect to the two separate incidents on the grounds that the Organization has combined the two disputes noted above into one case before the National Railroad Adjustment Board. This contention of the Carrier is rejected since the submission of claims in combination before the Board does not, by that fact alone, alter or amend the claim (Third Division Award 22612).

With respect to the incident allegedly occurring on October 21, 1981 a review of the record shows sufficient substantial evidence to warrant conclusion that Claimant was guilty as charged. Claimant admits that he left work early on the day in question without permission, that he entered eight (8) hours for himself for that day in the Daily Work Report when he had in fact worked some 45 minutes less than that, and that he filed the Report late in violation of current instructions. The investigation into the second incident which allegedly occurred on October 29, 1981 established that Claimant was in a reclining position in a Carrier truck for some 10-20 minutes (the exact number of minutes was never established shortly after 2:00 p.m. on that date. Claimant admitted this and four (4) witnesses also testified that this was the case. Here too sufficient substantial evidence is present to warrant conclusion that Claimant is guilty as charged.

The only issue to be resolved by this Board, therefore, is whether the penalties imposed by the Carrier were reasonable. This Board has underlined in numerous prior Awards that the role of discipline is not only punitive but that it should also provide corrective and training measures for employees (Second Division Award 6485; Third Division Awards 5372; 19037 inter alia). Although the Carrier based discipline, as outlined in its letter(s) to the Claimant on November 19, 1981 "...in part on your previous work record", nowhere can the Board find evidence, presented on property, that these incidents for which Claimant has been disciplined are other than the first during his 5 year tenure with the Carrier. While not denigrating guilt, such prior record does provide mitigating circumstances whereby, under the rule of progressive discipline, the quantum of discipline can be more reasonably assessed. Since this is the case the Board rules that the Claimant's thirty (30) day suspension be reduced to a fifteen (15) day suspension, and that he be made whole for the other fifteen (15) days. Further, the Board rules that the Carrier remove restrictions and return to the Claimant the right, once again, to bid on Assistant Foreman or Foreman positions in the future. The Claimant is not to retain, however, prior seniority rights as Assistant Foreman or Foreman when bidding on such positions in the future.

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 violated.

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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 13th day of April, 1984