

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25405
Docket Number CL-25074

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Galveston Wharves

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9772)
that:

(1) Carrier violated the Rules of the current Agreement between the parties when it arbitrarily and capriciously suspended Clerk Gary Finley from its service for five (5) working days, Sunday, June 20, 1982 through Friday, June 25, 1982.

(2) Carrier shall compensate Mr. Finley for all time lost during the period June 20 through and including June 25, 1982 and shall expunge his service record of all references of these charges and discipline assessed.

OPINION OF BOARD: An investigation was held on June 3, 1982, to determine Claimant's responsibility, if any, in connection with the charge made by the Superintendent of Railroad Operations that he missed Extra Board calls for 6:00 A.M. and 8:00 A.M. on Thursday, April 29, 1982; that he accepted an Extra Board call for the vacant 11:59 P.M. Clerk's position on April 29, 1982, but did not report to work in a timely fashion; and that he missed an Extra Board call for 6:00 A.M. on Friday, April 30, 1982, in violation of Rule C and Rule 752(A) of the Rules, Railroad Operations, Galveston Wharves. These rules read as follows:

"Rule (C) Employees must know and obey the rules and special instructions. If in doubt as to their meaning, they must ask their supervisor for an explanation.

Rule 752(A) Employees must report for duty as required and those subject to call for duty will be at their usual calling place or leave information as to where they may be located. They must not absent themselves from duty, exchange duties or substitute other persons in their place without proper authority."

Based upon the trial record, Carrier concluded that the evidence supported the charge and Claimant was assessed a five (5) working day's suspension, effective June 20, 1982, through June 25, 1982. This disposition was appealed.

In defense of his petition, Claimant asserts that Carrier failed to meet its required evidentiary proof burden since the Superintendent of Railroad Operations could not testify that Carrier adequately complied with the pertinent provisions of the Extra Board Agreement, and further, the Superintendent acknowledged that he did not know the name of the Clerk who had made the notation in the log on April 29, 1982, that Claimant was called. The call log indicated that Claimant was called at 4:10 A.M. and 4:30 A.M., on April 29, 1982. Claimant notes that the Superintendent also acknowledged that Claimant

was called in error to fill the 11:59 P.M. vacant Clerk's position on April 29, 1982, and observes that it was thirty nine (39) minutes before the start of the tour. Claimant argues that it would be manifestly unfair to conclude that he reported to work in untimely fashion since he only received the call at 11:20 P.M., and improper to conclude that he missed a call for the 6:00 A.M. job on April 30, 1982. In both instances he asserts that he was not marked for placement on the Extra Board when the calls were made.

Carrier contends that the log record shows that Claimant missed a call for a 6:00 A.M. vacancy on April 29, 1982. It withdrew the added specification that he missed the 8:00 A.M. Extra Board Clerk call on April 29. It argues that when he accepted the call for the 11:59 P.M. Clerk vacancy he was obligated to report to work in timely fashion. It avers that a 1:20 A.M. arrival is not timely. While it concedes that he was contractually off for twenty four (24) hours, pursuant to Section 10 of the Extra Board Agreement, and since he missed a call for the 6:00 A.M. vacancy that morning (April 29), it maintains that he assumed a definitive commitment to report to work in a timely manner. Moreover, it asserts that he then failed to protect the 6:00 A.M. vacancy on April 30, 1982, after having been pointedly advised at about 1:40 A.M. (April 30, 1982), that he would be called for a 6:00 A.M. vacant Clerk's position. In particular, it argues that when he indicated he was not going to answer the 6:00 A.M. call, he made an impermissible independent determination to take matters into his own hands. In effect, it contends that notwithstanding the call error at 11:30 P.M. on April 29, 1982, Claimant was compelled by the normal requirements of the employment relationship to comply promptly with supervisory directives and then grieved later if he considered them improper.

In reviewing this case, we find that Claimant missed the 6:00 A.M. call on April 29, 1982. Admittedly, while Carrier was not attentive to the requirements of Section 1D of Addendum No.1 when it called Claimant at 4:10 A.M. and 4:30 A.M., the record does show that he was called twice. We have no evidence to refute these calls and Claimant's procedural objections are not extenuating. He was on the Extra Board at that time and mindful of a prospective call. Since he missed the 6:00 A.M. call, he was contratually marked off the list for twenty four (24) hours, and thus, the initial 8:00 A.M. missed call specification was deleted. In a similar vein, we also find that he was informed that he would be given a 6:00 A.M. call on April 30, 1982. Irrespective of his interpretation as to what constitutes an application of Section 10 of the Extra Board Agreement, he was clearly apprised that he would be called. Whether he was off the Extra Board list is immaterial under these explicit circumstances, since he was aware of the pending call. If he felt Carrier's action to be improper and inconsistent with the Extra Board Agreement, he should have made himself available for the 6:00 A.M. call, and then grieved his disquiet in accordance with the applicable grievance procedures. Rendering a unilateral judgment was not acceptable.

Conversely, we cannot agree with Carrier's position that he reported to work in untimely fashion for the 11:59 P.M. vacancy on April 29, 1982. It would be most unreasonable to hold him accountable when Carrier actually called him at 11:30 P.M. and Claimant was not on the Extra Board list at the time. He was not only called in error, which the Superintendent of Railroad Operations acknowledged, but called thirty nine (39) minutes prior to the start of the tour. It would be imprudent and unfair to hold him responsible for this asserted violation. Accordingly, in view of these findings, we believe that the five (5) working days suspension is unwarranted and it is reduced to two (2) working days. This is a reasonable penalty determination. Claimant is to be made whole for the difference in 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

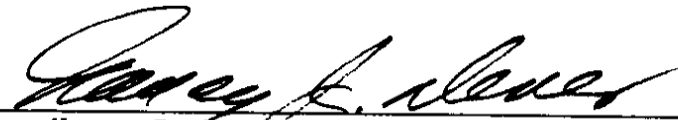
That the discipline was excessive.

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 15th day of April 1985.