

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25534
Docket Number MW-25406

Frances Penn, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Alton and Southern Railway Company

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

(1) The sixty (60) days of suspension imposed upon Trackman E. Burns, Jr. for "failure to protect your assignment since June 24, 1982" was improper and unwarranted (System File 1982 - A&S/S-1638-74).

(2) The claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Trackman E. Burns, Jr. was suspended for sixty (60) days for failure to protect his assignment from June 24, 1982, to July 23, 1982, when he was confined to the St. Clair County Jail because of a "domestic problem." The Organization contends that the Claimant received permission to be absent by telephone from his Supervisor, Assistant Roadmaster Ernie Hale, whom he called at the beginning of his confinement. The Carrier contends that the Assistant Roadmaster did not give the Claimant authority to be absent, that the absence was not for good cause, and that the discipline imposed was proper and warranted.

After a careful review of the Transcript of the investigation, conducted on July 26, 1982, this Board finds no reason to overturn the actions taken by the Carrier. The record shows that the Claimant and his Supervisor disagree about the conversation that they had when the Claimant called. The Claimant testified that after he told Mr. Hale that "I wouldn't be able to make it because I was confined," Mr. Hale answered, "Okay." Mr. Hale testified: "The only conversation I had with Ed on the phone about protecting his assignment was he asked me something like 'Is it cool?' I asked him to repeat it and he said, 'Is it cool?' and I told him that we would see." Mr. Hale states that he did not give the Claimant permission to be absent.

It is not the province of this Board to judge the credibility of witnesses who appear at the hearing on the property. (See Third Division Awards No. 24991, No. 24640 and No. 25102.) The Board notes the testimony in this case because even if the Claimant's version of the conversation were adopted, the Supervisor's answer of "okay" would not be interpreted as authority to be absent without good cause. Prior Awards consistently hold that incarceration is not justification for an absence. (See Third Division Awards No. 25306 and No. 25131.) Under all the circumstances, there is nothing in the record to show that the sixty (60) day suspension imposed by the Carrier was arbitrary, capricious, or harsh.

The Organization contends that the Claimant was denied his contractual right to due process as contemplated by Rule 20A(a) which reads in pertinent part:

*(a) An Employee in the service sixty (60) calendar days or more, and whose application has been approved, will not be dismissed, or otherwise disciplined, without being given a fair and impartial hearing."

The Organization contends that the Claimant was denied his contractual right to due process because the hearing on July 26, 1982, was conducted by Trainmaster F. E. Cooper, but the decision was rendered following the hearing by R. E. Heath, who was not present at the hearing. Since the record clearly shows that these procedural objections were not raised on the property by the Organization they are not timely and cannot be considered by this Board. This Board does not have jurisdiction under the Railway Labor Act, as amended, and as codified by this Board in Circular No. 1 to consider arguments and issues which have not been handled on the property. (See Third Division Awards No. 25306 and No. 25131.)

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1985.

