

SM  
J.B. P.  
MJS  
NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25657  
Docket Number CL-25688

Stanley L. Aiges, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(  
(Chicago, Milwaukee, St. Paul and Pacific Railroad  
( Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9884) that:

1) The Carrier violated the Clerks' Rules Agreement at Olivia, Minnesota, when it charged, held investigation and assessed discipline of sixty (60) days suspension to Employee R. C. Smith on February 18, 1983.

2) Carrier shall now be required to clear Employee R. C. Smith's record of all mention of charges, investigation and subsequent discipline and compensate him for all lost time caused by such discipline.

OPINION OF BOARD: Claimant R. C. Smith was issued a 60-day suspension (February 19 - April 19, 1983) for his alleged failure properly to fill out waybill forms on several dates in December 1982 and February 1983. The Organization argues that the Carrier here failed to meet its burden of proof. In any event, it asserts, the penalty imposed was excessive and unreasonable.

The threshold question in all discipline cases is whether the Claimant has been proved guilty of the charges against him. The record establishes that: (1) Agent Operators, such as Smith, are responsible for completing waybill forms properly; (2) in order to do so, certain sections of the form must be filled out when taking telephone billing information; (3) Smith, as an experienced Agent Operator, is fully aware of the procedures required to complete waybills properly; and (4) he failed to fill in Section 7 of three waybills completed on December 10, 1982, one completed on December 13, 1982 and one completed on February 1, 1983. In fact, Claimant acknowledges that he failed to prepare the waybills in question properly. Under the circumstances, it is apparent that the Carrier has met its burden of proof. Claimant is indeed guilty of the charges against him. Carrier had just and sufficient cause to discipline him.

The sole remaining question is whether the penalty imposed - a 60-day suspension - was appropriate. Ordinarily, once guilt is clearly established, this Board is reluctant to substitute its judgment for the Carrier's and to disturb the degree of discipline imposed. However, when a penalty is clearly excessive, we have been willing to intervene. In this case, we believe the discipline imposed was unnecessarily harsh and excessive. The more reasonable penalty would have been a 30-day suspension.

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. Dyer - Executive Secretary

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