

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25905

Docket Number CL-24894

George V. Boyle, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(The Seacoast Transportation Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9696) that:

1. Carrier acted arbitrarily, capriciously and in a harsh and discriminatory manner, violating Rule 15 and other rules of the Agreement, when it assessed thirty-one (31) days actual suspension to Mr. J. L. Burgio, Truck Operator, TOFC Ramp, Hialeah, Florida, following investigation conducted at Hialeah, Florida on December 10, 1981.

2. As a consequence, Carrier shall compensate Clerk Burgio for all time lost and benefits taken from him as a result of Carrier's action."

OPINION OF BOARD: The Claimant was a six year employee at the Carrier's location in Hialeah, Florida. On October 27, 1981, and November 2, 1981, by his own admission he was guilty of failing to record the seals on two Georgia highway trailers, RSCZ-287791, REAZ-295188 and Trailer AVAZ 205017. Also, by his own admission he did not have the latter trailer properly signed for. And finally he failed to complete the inspection reports on the three vehicles.

These duties are part of the Claimant's regular assignment and his failure to perform them properly is documented as violations of Rule 11, Part (b); Rule 12, Part (i), Part (j), Part (k),; Rule 172; Rule 173; Rule 265; and Rule 266.

A hearing was held and resulted initially in the assessment of thirty-one (31) days suspension. Subsequently the penalty was reduced to fifteen (15) days but this is appealed to the Board as too severe.

The Employees argue that:

1) Another individual was assessed only a five (5) day penalty for "mishandling" one (1) trailer with a resultant loss of over \$4,000.00 while the Claimant in this case caused no loss or damage to the Carrier and was assessed a much more severe penalty.

2) While the Claimant would not sign a waiver and requested a hearing, the individual treated less severely signed a waiver which resulted in a lesser penalty. Therefore the only plausible reason for the disparity of treatment must be the Claimant's refusal to waive his right to a hearing and thus he is being treated "arbitrarily, capriciously and in a harsh and discriminatory manner."

It is the Carrier's contention that the offenses are serious enough to warrant the penalty assessed, especially in view of recent theft and loss at the Hialeah location which should have made all employees more cautious and scrupulous in attending to their duties.

Moreover, since there was no record in the case the Employees chose to use as a comparison, there is no way to assess how close the conditions are to one another in terms of the offenses, the circumstances and degree of culpability. There is, then, no way of comparing the penalties.

Further although employees' past records may not be used in determining guilt or innocence, they may properly be used in fashioning appropriate disciplinary action. This the Carrier did in assessing the penalty of fifteen (15) days.

In no case has it been established that all penalties, for all employees for all comparable offenses must be exactly equal. The Board insures only that the results are equitable for the parties involved.

In the instant case the Board finds that the penalty is not too severe. It does not warrant disturbing the Carrier's judgment and the claim is denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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 26th day of February 1986.

