

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25940

Docket Number CL-25809

Marty E. Zusman, Referee

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

PARTIES TO DISPUTE: (

(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-9911) that:

1. The Carrier violated the Clerk's Rules Agreement at St. Paul, Minnesota, when it charged, held investigation and assessed discipline of ten (10) days actual suspension from service to Employee H. E. Hapsch on March 30, 1983.

2. Carrier shall now be required to clear Employee H. E. Hapsch'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 H. E. Hapsch, a Crew Caller was notified to attend an Investigation which was held on March 22, 1983.

Claimant was charged with calling to service a Locomotive Fireman who was not legally rested within the specifications of the Federal Hours of Service Law and thereafter failing to report said violation. By letter dated March 30, 1983, Claimant was notified that he had been found guilty as charged and was assessed an actual suspension of ten (10) days from service.

With respect to the merits of the case the Board finds substantial evidence present to warrant conclusion that the Claimant is guilty as charged. By Claimant's own testimony, he had a responsibility to assure the Fireman was properly rested. Claimant admits he failed to check the records prior to calling the Fireman for service. In the instant case it is clear that any error Claimant made on the first call was not corrected in the second call which was made to the same employee. Clearly there is sufficient evidence that the Claimant failed in his responsibilities and on neither occasion assured that the employee he called was legally rested, although the records were readily available. The fact that the Locomotive Fireman who received the call went to work or failed to inform the Claimant that he was not legally rested does not relieve Claimant of his responsibilities (see Third Division Awards 22286, 22090, 21301). Our review of the transcript documents that Carrier's decision in the whole of this case was based upon substantial evidence.

As for the discipline assessed, this Board has long held that when guilt is clearly established, it will not substitute its judgment for that of the Carrier unless it can be shown that there is a lack of progressive discipline or that in some manner the Carrier's actions were unreasonable, arbitrary, or capricious (Third Division Awards 21094, 19708, 16678, 14700). While we note the long record of service of the Claimant, we also note the seriousness of his offense. The Carrier utilized Claimant's past record in determining the quantum of discipline and its judgment of corrective measures

is within its proper exercise of discretion. This Board finds no basis in the record to disturb the Carrier's action in the case at bar.

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 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

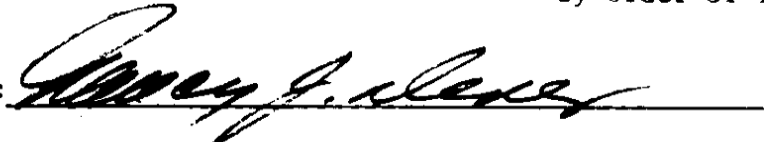
That the Agreement has not been violated.

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.

