

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25977
Docket Number MW-25943

Marty E. Zusman, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Kansas City Southern Railway Company

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

(1) The five (5) days of suspension imposed upon Track Laborers C. C. Dixon, L. L. Allen and J. C. Harris for alleged failure to follow instructions and failure to devote themselves exclusively to their duties on June 10, 1983 was without just and sufficient cause and on the basis of unproven charges. (Carrier's Files 013.31-282, 013.31-283 and 013.31-281).

(2) The claimants' records shall be cleared of the charges leveled against them and they shall be compensated for all wage loss suffered."

OPINION OF BOARD: Track Laborers C. Dixon, L. Allen and J. Harris, Claimants in the case at bar, were assigned to Extra Gang XG500. They were given explicit instructions by their Foreman on the amount of rail to be laid and the manner in which to set spikes. On June 10, 1983, all were handed letters of warning that they were "obligated to follow instruction(s) given . . . by (the) foreman" and that they had failed to do so. On July 13, 1983, each Claimant was ordered to attend an investigation of alleged failure to follow instructions and to devote himself exclusively to his duties. Each was found guilty and suspended for five (5) days.

A review of the record finds issues, arguments and material (including the Claimants' past discipline) which was not made a part of the record on property and is therefore too late for consideration by this Board when raised in Ex Parte Submissions. The on-property issues are clear. The Organization maintains Claimants were not guilty and the Carrier which had the burden of proof, failed to carry its burden. The Carrier maintains a record which proves the Claimants guilty by the testimony of the Foreman with substantiation by the Assistant Roadmaster.

With regard to the merits of the case at bar, the letter of June 10, 1983 given to the Claimants by the Foreman states, in essence, that Claimants should speed up their work. The Foreman states that Claimants were slowing down the production of the gang by talking and failing to follow instructions. The Assistant Roadmaster was called back to observe the Claimants and states of his observations that "there was no way any supervisor could put up with the way they were that day, gathered around talking- -they were actually bull corning around more than they were setting spikes."

The Claimants maintain that they were "holding up no work" and that they were not guilty. This Board has reviewed the record carefully and finds that there is substantial evidence to support a conclusion of guilt.

Claimants were clearly instructed to speed up their work. The record clearly documents that they did not speed up, that their work productivity "was the same" after the warning. Although Claimant Harris denies talking to anyone while setting spikes, Claimant Dixon admits talking with Harris. In the whole of the case, Carrier arguments prevail as there is substantial evidence to satisfy Carrier's burden of proof that the Claimants are guilty as charged. Substantial evidence in this industry has been defined "as such relevant evidence that a reasonable mind might reach a conclusion of guilt" (Consol. Ed. vs. Labor Bd. 305 U. S. 197, 229). Given the record as developed on property, this Board cannot conclude that Carrier's action is arbitrary, capricious or an abuse of discretion. This Board will not disturb Carrier's action in this case.

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

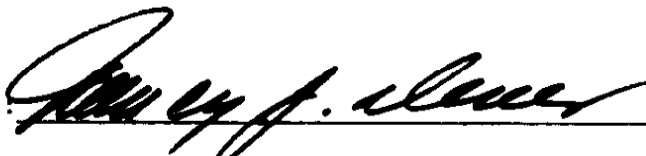
That the Agreement was not violated.

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 14th day of March 1986.