

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26175
Docket Number SG-26257

Peter R. Meyers, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the
Brotherhood of Railroad Signalmen on the Denver
& Rio Grande Western Railroad Company:

On behalf of Signalmen R. C. Roller who was dismissed on May 25, 1984:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 65, when on May 25, 1984 it dismissed Mr. Roller without a fair and impartial hearing and without just and sufficient cause.

(b) Carrier should now be required to reinstate Mr. Roller to his former position with all rights and benefits unimpaired; compensate him for all lost time from May 25, 1984 until he is reinstated, and clear his personal record of any reference of this matter. (General Chairman file: 24-51. Carrier file: SG-3-84)"

OPINION OF BOARD: Claimant was employed as a Signalman by Carrier. Claimant failed to report for work on his regular Signal Gang assignment, then located at Palisade, Colorado, on April 30 and May 1-3, 1984. On May 4, 1984, Claimant was notified to report for an Investigation into the charge that he had been absent from duty without authority. After a postponement, the Investigation was conducted on May 21, 1984; Claimant did not attend the Investigation. As a result of the Investigation, Claimant was dismissed from service on May 25, 1984. The Organization thereafter filed a Claim on Claimant's behalf.

This Board has reviewed the evidence and testimony in this case; and we find that the Claimant was provided with all of his procedural rights, as he was properly notified of the charges against him and afforded a full Hearing in which to present his evidence. The Hearing was postponed on one occasion, at the Claimant's request, to a more convenient date. Although the Claimant did not attend the Investigation, when it was heard, he was afforded all of his rights; and his procedural Claims are dismissed.

With respect to the substantive charges, there is evidence in the record to support the charge that the Claimant failed to report to work on

April 30, 1984, and May 1, to 3, 1984. Hence, the Carrier had a sufficient basis to impose discipline on the Claimant. Once this Board finds that a Claimant was properly found guilty, we next turn our attention to the type of discipline imposed. This Board will not normally second-guess a Carrier with respect to the imposition of discipline unless the action taken by the Carrier was unreasonable, arbitrary, or capricious. In this case, there is no evidence in the record of any prior discipline of the Claimant during his employment with the Carrier. The Carrier subscribes to a progressive disciplinary procedure, and therefore the Claimant is entitled to some warning before receiving the most serious type of discipline--that is, discharge. Hence, we find that it was unreasonable for the Carrier to discharge the Claimant on the basis of the record before us; and we hereby order that the discharge be commuted to a lengthy suspension, and the Claimant should be reinstated with seniority and all other rights unimpaired but with no backpay.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

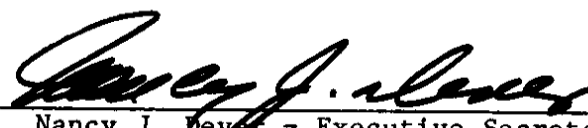
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 29th day of October 1986.

