

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation

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

1. B&B Mechanic G. Pfistner shall be compensated for all compensation loss suffered by him as a result of being improperly withheld from service from June 18 to June 27, 1984, both dates inclusive. (System Docket CR-1051)."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

In this case, admittedly, the Board is confronted with a novel adjudicative issue. That is, we have a set of facts and circumstances that are essentially accepted with minimal dispute by the parties, and reasonably argued partisan positions. In effect, notwithstanding the assessment of a ten (10) day deferred suspension, which by simple extension means at least, deferred until some future date, the Claimant believing that the Disciplinary Notice, stating, in part, "put into effect, 6-11-84" actually meant he was to be off ten days, and thus absented himself from work on June 18, 19, 20, 21, 25, 26 and 27, 1984. When he was accorded an Appeals Hearing, his discipline was reversed and its notation was expunged from his personnel record. He was informed, though, at the June 27, 1984 Appeal Hearing, that he improperly marked off duty for ten (10) days and the suspension had been deferred, not actual, as noted on the Disciplinary Notice.

In defense of his petition, Claimant contends that he construed the notice to mean immediate implementation, which he further observes was the same interpretation provided by his supervisor and further that his supervisor never inquired into his absence.

Carrier maintains that the Discipline Notice specifically stated deferred suspension and consequently, if Claimant had any question about its meaning and/or application he should have contacted a Carrier official or his local union representative for an accurate interpretation. It asserts that he was instructed to serve the discipline and thus any confusion or misunderstanding he might have had stemmed solely from his actions. It concludes that given these facts, there is no basis for monetary compensation.

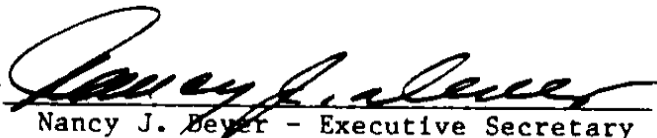
In considering this case, we concur with Claimant's position. Careful review of the record indicates that both parties were essentially responsible for Claimant's inadvertent absence and hence both parties should share in the attendant liability. We hasten to point out, however, that while we understand Claimant's interpretative predicament, when he read the words, "put into effect, 6-11-84," there was a correlative obligation on his part to be more diligent. By itself, his inattentiveness is no defense against Carrier's refusal to compensate him for the time not worked, but Carrier compounded the problem by failing to monitor his attendance. In view of the recent disciplinary assessment and a scheduled Appeals Hearing on June 27, 1984, Carrier should have been more attentive to his actions. Accordingly, we will direct Carrier to compensate him for the last four (4) days of his absence.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1988.