

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27624
Docket No. CL-26754
88-3-85-3-510

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

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

PARTIES TO DISPUTE: (

(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10035) that:

1. Carrier violated the terms of the current Agreement, particularly Rule 21, when it failed to provide Claimant with a fair and impartial investigation and failed to prove the charges filed against the Claimant.

2. Carrier shall be required to clear Claimant's record of the charges and discipline issued him and that he be paid for all lost time."

FINDINGS:

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

The carrier or carriers and the employee 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.

Subsequent to an investigation, which was postponed a number of times, the Claimant was found guilty of the following charge:

"Your responsibility for falsifying your payroll sign-in sheet for the dates of Friday, March 9 and Monday, March 12, 1984 when you 1) incorrectly stated your starting time on March 9, 1984 and 2) reported your starting and quitting times for March 12, 1984 on March 9, 1984."

The Carrier then assessed a fifteen (15) calendar day suspension.

Both parties have advanced procedural challenges in addition to contentions with respect to the merits.

Turning to the procedural concerns of the parties, while we recognize a certain amount of validity in each of the parties' arguments in this respect, we conclude that the matter at issue is best resolved on the merits.

With respect to the substance, we generally find that the Carrier's finding of guilt to the charges was based on valid considerations. We are not unmindful that the trial transcript, an extremely lengthy one, shows considerable controverted evidence. However, it is not our function to resolve conflicts in testimony. That is the role of the Hearing Officer. Nonetheless, under the particular circumstances brought forth in the record before us, we conclude that an unduly harsh standard of discipline has been applied which is not consistent with a reasonable standard of progressive discipline. Accordingly, the discipline will be reduced from fifteen (15) days to five (5) days suspension.

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
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1988.