

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

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

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

(1) The disqualification as track foreman and assistant track foreman and the thirty (30) days of suspension imposed upon Mr. H. L. Swinney for allegedly claiming eight (8) hours' pay for June 13, 1986, was excessive and unwarranted (Carrier's File 013.31-356).

(2) Mr. H. L. Swinney's record shall be cleared of the charge leveled against him, his seniority and all other rights as track foreman and assistant track foreman shall be restored unimpaired, he shall be compensated for all wage loss suffered between September 15, 1986 and October 14, 1986 and he shall be paid the difference in rate of pay between his former position as track foreman and his present position as machine operator beginning October 15, 1986 until the violation is corrected."

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.

By letter dated August 5, 1986, Claimant was notified to attend a formal Investigation to determine his responsibility if any for claiming and receiving pay for work not performed. Carrier alleged that Claimant submitted and was paid for working on June 13, 1986, when in fact, Claimant had not worked at all on that day. Following the Investigation, the Claimant was notified that he had been found guilty as charged. Claimant was suspended for thirty (30) days and disqualified as Foreman and Assistant Foreman.

As a preliminary point the Board finds no support for any procedural violation committed by the Carrier of Rule 13. On merits, the record is clear that Claimant requested to be off work and was not working on June 13, 1986. Claimant further admits that he submitted a Daily Work Report claiming pay for himself as Foreman for the full eight hours of June 13, 1986, and cashed the check. Claimant also failed to compensate an employee who filled his Foreman's position in his absence although Claimant told the employee he had been compensated. Based on this record the Claimant is guilty as charged.

The issue herein is the quantum of discipline and we have carefully read the Organization's arguments. The Board however does not find the Carrier's judgment excessive or harsh. Claimant submitted a Daily Work Report obtaining pay for himself for hours of work he did not perform. The transcript indicates that Claimant was fully aware of the Rules and violated them. He improperly obtained income. This Board has often found that such inaccurate claims may result in dismissal irrespective of the stated reason (Third Division Awards 26526, 25843, 25844, 26280, 26533). Given the Claimant's past record, the assessed discipline herein will be left undisturbed (Third Division Award 24558).

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 27th day of April 1990.