

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Alton and Southern Railway Company

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

(1) The demotion from section foreman and the thirty (30) days of suspension imposed upon Mr. D. Chapman and the thirty (30) days of suspension imposed upon Mr. B. L. Adams for their alleged violation of Rule 604 and Rule 607 of the Safety, Radio and General Rules for All Employees on March 19, 1988, was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (Carrier's Files 880575 and 880576).

(2) The Claimants shall have their records cleared of the charges leveled against them and they shall be paid for all wage loss suffered as a result of the discipline imposed upon them. In addition, Claimant D. Chapman shall have his seniority and all other rights restored unimpaired as section foreman."

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 employees involved in this dispute are respectively carrier and employees 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.

On March 19, 1988, Claimants Chapman and Adams were assigned as Track Foreman and Truck Driver, respectively, with hours of duty from 5:00 P.M. to 1:00 A.M. Following a Hearing, Carrier suspended both Claimants for thirty (30) days and demoted Claimant Chapman to Track Laborer. Carrier contends the Hearing established that Claimants failed to devote themselves exclusively to their duties and failed to perform their duties properly in that they failed to correct several areas of track that were out of gauge by 3/4 to one inch. Furthermore, Carrier asserts Claimants were parked in their truck for two hours without performing any work.

The Organization has raised an objection regarding the chain of appeals following the assessment of discipline. Had the appeals been handled in the usual manner as specified by the Carrier, the first appeal would have been presented to and answered by the Roadmaster who was the chief witness at the Hearing. The second appeal would have been presented to and answered by the Superintendent, who conducted the Hearing. The Roadmaster did, in fact, receive and deny the Claims at the first level. Although the subsequent appeals were directed to the Superintendent, they were denied by the Assistant Superintendent who was the Carrier officer who issued the discipline. In each of the first two levels of appeal, the Organization asked the Carrier to substitute an officer who had not been involved in the issuance of discipline. After the Assistant Superintendent denied the appeal on the second level, the Organization objected because he was not the officer to whom the appeal was made. While these objections seem to be contradictory, the facts in this case provide a common thread.

Second Division Award 11578 addresses both of these procedural issues, and is cited by both parties. On the one hand, the Board noted Awards which held that contractual due process requires independent review and decision at each successive appellate level. On the other hand, the Board did not consider it a breach of the Agreement for the Carrier to designate an alternate officer to consider the appeal of a discipline Claim, when doing so would afford independent consideration of the matter. As noted below, we reject the former premise and find the latter to be moot.

In the case before us, the Carrier apparently recognized, at the second level of appeal, the need to provide independent review. However, replacing the officer who conducted the Hearing with the officer who issued the discipline did nothing to remedy the situation. Thus, over the objection of the Organization, the Carrier denied independent review of the Claim at the first two levels of appeal.

The Carrier argues Claimants were finally afforded an independent review at the third appellate step, and cites Board Awards in support of its position. At the final level of appeal on the property, the Carrier officer who reviewed the claim stated that his decisions followed a thorough review of the transcript of Investigation. The Organization does not argue bias or prejudice at this level. We concur with the view of this Board, as expressed in Third Division Award 27610, that Agreement due process is afforded when the final decision is made by a Carrier official who was not involved in the discipline process and is made following a review of the matter de novo.

We are now left with the issue of answering the appeal by an officer other than the one to whom it was addressed. As the Assistant Superintendent was not a disinterested party, the exception provided by Second Division Award 11578 is not applicable. As noted in Third Division Award 27590, the Board has not been consistent in its interpretation of rules based upon Article V of the August 21, 1954 National Agreement, the Rule in this case. That Award examined the issue at length, and we agree with the conclusion that the Rule does not require claims to be denied by any particular Carrier officer. Thus, the Assistant Superintendent's denial, per se, was not a violation of the Agreement.

Turning to the merits of the case, we find substantial evidence in the record to conclude that the charges were proven. Despite efforts to locate Claimants by driving through the yard and attempts to contact them on the radio, they could not be found. Claimants' work report indicated they were checking gauge, but subsequent inspection of the track showed excessive gauge which should have been repaired or reported. Under the circumstances, it was reasonable for the Carrier to conclude Claimants were parked next to some empty hoppers for approximately two hours, performing no constructive service.

Although the Carrier subsequently related Claimants' conduct to specific Rule violations, there is no support for the Organization's argument that Claimants were disciplined for charges not leveled against them. The purpose of the statement of charge is to inform an employee of the nature of the disciplinary hearing and to allow him to prepare a defense. Unless otherwise required by the Agreement, the Carrier is not required to cite specific rules which might have been violated.

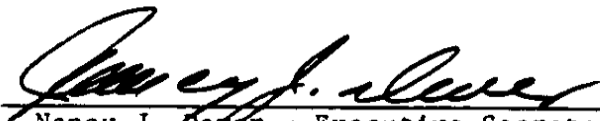
In light of the proved offenses, we do not find the assessment of discipline in this case to be excessive. The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1991.