

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 28842
Docket No. MW-29390
91-3-90-3-316

The Third Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

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

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

(1) The five (5) day suspension assessed to Track Laborer D. Jackson for allegedly violating Rule Q on June 9, 1988 was arbitrary, capricious and in violation of the Agreement (Carrier's File 013.31-392).

(2) As a consequence of the afore-stated violation, the Claimant shall be compensated for all time loss between June 8 and 12, 1989 and his personal record cleared of the charges."

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 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.

The Claimant worked as a Track Laborer for nine (9) years. At the time of the incident now placed before this Board, he was a member of Carrier's Maintenance of Way Extra Gang 505, which was a system tie gang. His employment record indicates he was suspended in 1985 for thirty (30) days; suspended for fifteen (15) days for Rule Q violation in 1988; and, suspended for ten (10) days for a Rule N violation in 1988.

On June 9, 1989, the Gang on which the Claimant was working was changing work sites. Instead of reporting to the collecting point, the previous days headquarters, he went directly to the new work location. Although he arrived nearly at the same time as everyone else, he was two hours late in actually reporting to work. On this occasion, he was given a letter of warning.

The following month, he became ill on Friday, July 8, 1989. He asked his wife to call the motel where the Foreman of the gang was staying. The Foreman was never given the message and believed the Claimant never attempted to call. The Claimant did get a hold of the Foreman around 6:30 P.M. the following Wednesday, July 13, 1989. The Foreman advised him he had been absent without authority for his failure to call in and report his absence. The Claimant advised the Foreman that he had been in the hospital with high blood pressure and had asked his wife to call in on Friday, July 8, 1989. He further stated that his wife did not call until 7:00 A.M., not knowing the Foreman left for the cite earlier. When the Claimant talked to the Foreman on July 13, 1989, he suggested the Foreman ask the desk clerk if someone had called. The Foreman for whatever reason would not. The Claimant at one point presented a doctor's statement to the Foreman which did indicate he had been under his care from July 8, 1989, until released for work on July 13, 1989. Regardless, the Foreman issued to the Claimant two additional warning letters, 7 and 8, for being absent without authority on July 8 and 12, 1989.

An Investigation was held and the Carrier determined that the evidence showed the Claimant had violated Rule Q by being late for work on June 9, 1989. In view of his past record, he was suspended for five (5) days. The matter was appealed through the Carrier's appeal process to this Board.

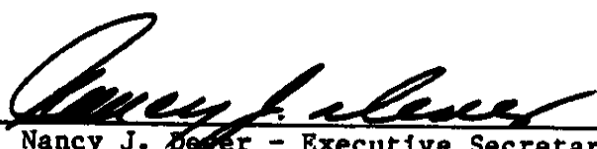
When it is proven that an employee has committed a rule violation, it is perfectly acceptable to review her/his employment record to determine the appropriate penalty. However, it is never appropriate to retroactively increase the penalty issued in an earlier rule infraction. In this case, the Claimant was given a letter of warning for his tardiness on June 9, 1989. The later assessment of a five (5) day suspension clearly constituted double punishment. It was irrelevant that the Claimant may have committed another rule infraction by not reporting off July 8 and 12, 1989. Once these charges could not be supported they should have been dropped. The latter charges should have had no impact on the earlier discipline.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1991.