

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (formerly The Chesapeake and Ohio Railway Company)

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

(1) The discipline [loss of track foreman's seniority and ten (10) days of actual suspension] imposed upon Mr. E. V. Adkins for allegedly leaving his work site without proper permission and showing himself on the payroll for time not actually worked on March 18, 1988 was arbitrary, capricious, harsh and unjust [System File C-D-4386/12(88-457) COS].

(2) The Claimant shall have his seniority rights as track foreman restored unimpaired; he shall have his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered and have ten (10) days credited toward his vacation qualifying 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 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.

Claimant was suspended for ten (10) days on April 18, 1988, for "leaving [his] job without proper permission; and, also for showing [himself] on the payroll for time not actually worked." In addition to the suspension, Claimant lost his Foreman seniority. The discipline was assessed for an incident occurring on March 18, 1988.

At the time of the April 18, 1988, incident, Claimant had over thirteen (13) years of service with the Carrier. He had been employed as a Section Foreman for over ten (10) years. Claimant was at that time under the supervision of a Roadmaster and an Assistant Roadmaster.

On Friday, March 18, 1988, Claimant submitted a weekly payroll in which he entered eight (8) hours of work for that day for himself. There is no evidence that this method of entering payroll data was anything other than customary. However, the Claimant subsequently left work in the middle of the day because a filling in one of his teeth had fallen out, and he needed to be treated by his dentist during work hours.

It is undisputed that the Claimant did not seek or receive prior permission from his Supervisors before leaving the job. However, it is also undisputed that the Claimant made arrangements for his crew to continue working under the supervision of an experienced Foreman.

On the following workday, Monday, March 21, 1988, the Claimant told the Assistant Roadmaster that he had left early on the prior Friday. He further told him that he would correct the overpayment by docking himself for three (3) hours on the payroll for the week beginning March 21, 1988. However, Claimant did not make that adjustment on the payroll he submitted on March 25, 1988. When he made the adjustment on Monday, March 28, 1988, he learned that the Roadmaster had already docked Claimant for the three (3) hours. The Roadmaster then refused to accept Claimant's change.

On March 25, 1988, the Division Engineer sent Claimant the following charges:

"You are charged with responsibility in connection with your leaving job without proper permission from your immediate supervisor near South Charleston, Yard office MP 457 Kanawha Sub-Division at or about 12:05 PM on 3/18/88 and showing eight (8) hours on time document for yourself."

The charge informed Claimant of the date, time and location of an Investigation in this matter.

The Organization asserts that Claimant had good reason to be absent for the period of time in question, and that he was not dishonest with respect to his payroll. According to the Organization, Claimant clearly told the Assistant Roadmaster that he would adjust the payroll, and therefore demonstrated no wrongful intent. As a result, the Organization contends that the Carrier failed to prove that Claimant improperly left his job or that he attempted to defraud the Carrier. In addition, the Organization argues that even if Claimant violated the applicable Rules, the loss of Claimant's Foreman seniority was an improper penalty under the circumstances.

The Carrier argues that Claimant was afforded a fair and impartial Hearing, and that the Carrier met its burden of proving the charges. The Carrier further asserts that the penalty of demotion and a ten (10) day suspension was fully justified by the circumstances of Claimant's conduct and his position as a Foreman.

There is no evidence that the Hearing was not fair and impartial. In addition, this Board finds that Claimant's conduct did, in fact, merit serious discipline. Operating Rule 500 provides that:

"Employees must not absent themselves from duty, or arrange a substitute to perform their duties without permission from their immediate supervisor."

The Rule contains no exceptions for employees who are Foremen. This Board agrees with the Carrier that Supervisors are obligated to observe such Rules with special care, considering their position in the workforce and their responsibilities in enforcing the Carrier's Rules and regulations. In view of this, Claimant's failure to obtain prior permission from his Supervisors was a serious infraction. Claimant had a radio by which to contact the Assistant Roadmaster. That he was able to arrange for a dental appointment demonstrates that he could have contacted his Supervisor, notwithstanding the pain from his tooth.

This Board cannot accept the Organization's assertion that his failure to notify his Supervisors was excused because employees are allowed to be absent due to illness. Claimant was disciplined for failing to obtain prior permission for his absence due to that medical condition, and not for being absent. Therefore, the authority cited by the Organization in this regard is not on point.

The Assistant Roadmaster was apparently willing to overlook Claimant's conduct when Claimant promptly told him of the problem on the following workday. However, his willingness to do so was conditioned on Claimant's promise to adjust the payroll for the week beginning on March 25, 1988. Claimant's failure to dock himself by the time period promised allowed the Carrier to reconsider the situation, and discipline Claimant for failing to follow Rule 500.

This Board has further concluded that the Carrier proved that Claimant violated Rule 520, which provides that:

"Time or wages must not be claimed on payroll, except for work actually performed by the person whose name appears on the roll and performed in accordance with agreed-to rules. The actual time that each member of a crew goes on and off duty must be shown on the payroll, regardless of the assigned hours. (Emphasis added)

The Carrier asserts, and this Board agrees, that Claimant's failure to correct his overpayment on the following payroll as promised exacerbated his failure to secure supervisory permission before leaving work to go to the dentist. However, because Claimant did not hide the overpayment, and indeed

promptly told the Assistant Roadmaster about the matter on the next workday, this omission is less serious than it would otherwise be. The fact remains, however, that Claimant did not do what he told his Supervisor he would do. His failure to dock himself until the following week thus warrants discipline, particularly in light of his status as a Foreman.

This Board disagrees with the Organization's assertion that the Carrier was required to prove that Claimant intended to deceive the Carrier. Claimant was not charged with "theft of time," "falsification of time sheets," or "fraud." Cases submitted by the Organization on those offenses are thus not relevant to the matter before this Board.

Therefore, this Board has determined that the Carrier properly discipline Claimant for "leaving [his] job without proper permission; and, also for showing [himself] on the payroll for time not actually worked," as charged.

Notwithstanding, this Board has further concluded that the penalty assessed by the Carrier was excessive. This Board is fully aware of its limited authority to review disciplinary penalties, and is not changing any of the preexisting standards by which it carries out such review. The penalty imposed by the Carrier--ten (10) day suspension and loss of Foreman seniority--has been evaluated under those criteria. As in Third Division Award 25622, the Board has concluded that "under the circumstances of this case," modification of the penalty is warranted even though "[t]he infractions for which Claimant was guilty are serious, meriting heavy discipline."

Those "circumstances" are as follows. While the record establishes that Claimant had been previously counseled for being late for work and for unspecified problems with his time sheets, there is no evidence in the record that he had received formal discipline during his long service with the Carrier and his ten (10) years as a Foreman. In addition, he left his crew with an experienced Foreman when he left the job to go to the dentist. His failure to contact his Supervisor before leaving was a serious mistake, and his failure to dock himself before March 25, 1988, was improper.

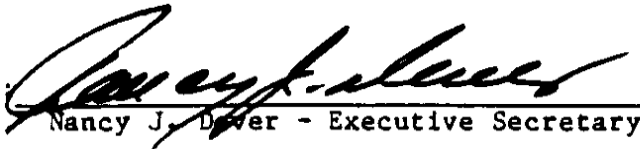
However, Claimant acted responsibly and honestly in informing the Assistant Roadmaster of the overpayment on the next workday, and he did adjust the payroll on March 28, 1988. This Board has determined that given all of the circumstances presented in this case, the Carrier acted in an arbitrary and capricious manner in revoking, rather than suspending, Claimant's status as Foreman. By requiring that Claimant re-qualify for that position, the Carrier's interests are protected, and it will be possible for the Claimant to resume, after he re-qualifies, the duties which he had satisfactorily held for ten (10) years. The Claim is denied as to the ten (10) day suspension of Claimant. The Carrier is ordered to restore Claimant's Foreman Seniority subject to Claimant re-qualifying for the Foreman position. Claimant will not receive compensation for income lost.

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 29th day of August 1991.