

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(CSX Transportation, Inc. (former Seaboard Coast Line  
( Railroad Company)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the  
Brotherhood of Railroad Signalmen on the CSX  
Transportation Company (former SCL):

Claim on behalf of Mr. J. E. Deal, Signal Foreman Gang 7X10 headquarters  
System, hours 7:00 A.M. to 6:00 P.M., one (1) hour lunch, rest days Friday,  
Saturday, Sunday, and Holidays.

- (A) Carrier has not proven by substantial evidence that claimant is guilty of any charges placed against him by carrier.
- (B) Carrier should now cancel suspension and reimburse claimant all time lost, straight and overtime from September 13 until suspension is cancelled or December 15, 1991.
- (C) Claimant is to receive credit days of suspension toward vacation time and personal leave, and his personal record should be cleared regarding this investigation." Carrier's File No. 15 (91-87). BRS File Case No. 8812-CSXT(SCL).

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.

By letter dated September 12, 1991, Carrier's Director Signal Maintenance and Construction directed Claimant to report for a formal Investigation to be conducted on September 20, 1991, in connection with the charge he was absent from his position on July 25, 1991, without permission, and falsified timesheets for himself and members of his gang on that date.

In connection therewith, Claimant was charged with possible violation of Operating Rule 515 prohibiting employees from claiming time or wages on payroll for work not actually performed, that part of Operating Rule 500 prohibiting employees from absenting themselves from duty without permission

from their immediate supervisor, and that part of Operating Rule 501 prohibiting dishonesty and insubordination.

Following the Investigation, and by letter dated October 7, 1991, the Director Signal Maintenance and Construction informed Claimant that testimony at the Investigation proved that he was absent from his assignment on July 25, 1991, and was responsible for claiming time and wages on the payroll for work not actually performed by him and members of his gang on that date in violation of Rule 515 and Rule 501 prohibiting dishonesty. Claimant was suspended for 90 days, from September 16 through December 15, 1991. Claimant was not found responsible for violating Rule 500, nor was he found guilty of being insubordinate.

It is the Carrier's position that on July 25, 1991, Claimant and his gang left their assigned territory two hours and fifteen minutes prior to quitting time on Claimant's authority, in spite of the fact Claimant had been instructed at a meeting on June 22, 1989, not to quit early unless he had permission. At approximately 3:45 PM, the Signal Supervisor visited the area the gang was scheduled to work and found that Claimant and his gang had already departed.

On July 31, 1991, i.e., six days later, the Signal Supervisor informed the General Supervisor (Claimant's immediate supervisor) of the incident. Carrier argues that when Claimant was questioned by his supervisor, he admitted that he and the gang departed from the work site without authorization at 3:45 PM. Carrier further argues that the Claimant had previously been instructed to adhere to the Agreement and to put in for overtime, rather than to make up time, and that he definitely was not to leave the premises without permission.

The Organization contends that Claimant did not falsify the timesheets. Rather, he engaged in a practice, well established on the property, of allowing his gang members to exercise "make-up" time, i.e., work overtime without pay on one day, then leave early without a reduction in pay on a subsequent day. The Organization further argues that the practice of making up time had been condoned by Carrier Officers for a very long time and, in fact, continued after charges were filed against Claimant. Without retreating from that position, the Organization argues that, in any event, the past practice of allowing "make-up" time must be seen as a mitigating factor which, when coupled with Claimant's 23 years of unblemished service, makes a 90-day suspension excessively harsh.

The evidence adduced at the Investigation demonstrated two facts very clearly. First, the Claimant overstepped the bounds of the Agreement between the Carrier and the Organization, as well as instructions issued by the Carrier, when he allowed employees under his supervision to leave early and yet claimed full compensation for the day. Claimant's testimony that he allowed the gang members "make-up" time in exchange for having had them work overtime on a previous day(s), even if believed, did not give him the authority to do so. The Claimant was guilty of violating the cited Rules.

The second fact clearly demonstrated at the Investigation, however, was that notwithstanding the Agreement and instructions issued by the Carrier, it was a common practice for management supervisors to allow employees early quits in the form of "make-up" time.

Thus, while we conclude that there was substantial evidence to find the Claimant guilty of Rules violations, we also find mitigating circumstances that render a 90-day suspension excessive. It is not entirely reasonable to expect a contract Foreman to adhere strictly to the Agreement and verbal instructions in the face of a disregard by management supervisors of the same Agreement and instructions. While we certainly recognize that management supervisors have greater latitude in exercising authority than contract supervisors, the action of management supervisors in ignoring the Agreement and instructions may very well have misled Claimant into committing his improper conduct.

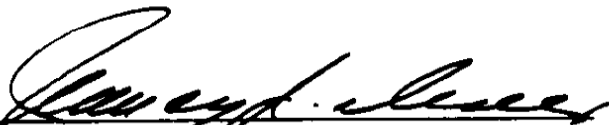
Accordingly, based on the unique and particular facts and circumstances involved here, the Board finds that the discipline imposed was excessive and should be reduced to a 30-day suspension. While we have concluded that Carrier could have made its point in this case with a 30-day suspension, Claimant should not read this reduction of penalty as a vindication of his action.

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 21st day of January, 1993.