

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31368
Docket No. MW-32001
96-3-94-3-356

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Southern Pacific Transportation Company
((Western Lines)

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

1. The Agreement was violated when the Carrier improperly withheld Mr. J. E. Madrigal from service beginning January 20, 1993, which resulted in a loss of work opportunity for which the Carrier failed to properly compensate the Claimant (Carrier's File MWD 93-19 SPW).
2. As a consequence of the violation referred to in Part 1 above, Claimant, J. E. Madrigal shall be allowed seventy-two (72) hours pay at his time and one-half rate."

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 employee 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.

Between January 20 and February 7, 1993, Claimant was held out of service while Carrier investigated the theft of a generator. Claimant was never charged, and an Investigation was not held on the incident. When Claimant was returned to service he was paid for all straight time work opportunities lost. The claim before this Board seeks compensation for the additional overtime work opportunities lost during that period.

The claim has merit. Carrier is not privileged to withhold an employee from service while it investigates alleged instances of misconduct, fail to charge the individual with anything, and then not pay him for the total loss incurred during the time out of service.

In this matter Carrier has constructively disciplined Claimant by not paying him for all of the work opportunities missed, including the overtime opportunities he would have worked during the time that he was being withheld from service, while it was investigating the incident. Discipline may not be administered except as provided by the Agreement, after Hearing and Investigation as provided in Rule 45.

The claim has merit.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of February 1996.