

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35730
Docket No. MW-35092
01-3-98-3-830**

The Third Division consisted of the regular members and in addition Referee Robert L. Douglas when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Southern
(Pacific Transportation Company (Eastern Lines))

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [five (5) days suspension] imposed upon Track Foreman J. D. Temple for alleged violation of Rule 1.6 in connection with the alleged ‘ . . . falsification of your time roll by turning in time for June 24, 1997 which was not worked.’ was on the basis of unproven charges and in violation of the Agreement (System File MW-98-3/1100123 SPE).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant’s record shall be cleared of the charges leveled against him, he shall ‘ . . . be reimbursed for all work days from August 4, 1997 through August 8, 1997, and for all overtime worked and to be reimbursed for any expenses that occurred at El Paso, Texas on July 15, 1997, to attend investigation, per diem pay for all lost days including weekends, seniority rights, all lost days to be counted as qualifying days for vacation purposes, and all other rights due him. . . .’”**

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 were given due notice of hearing thereon.

Rule 1.6 (Conduct), provides:

"Employees must not be:

- 1. Careless of the safety of themselves or others**
- 2. Negligent**
- 3. Insubordinate**
- 4. Dishonest**
- 5. Immoral**
- 6. Quarrelsome**
- or**
- 7. Discourteous"**

A careful review of the evidence indicates that an arrangement existed in the area where the Claimant worked whereby the prior Supervisor had granted employees who had established a positive safety record a bonus day off from work. In doing so, the arrangement included notification by the employee to the former Supervisor that the employee had taken the safety day off from work. To account for such time off from work, the Supervisor merely authorized the employee involved to indicate on the relevant time record that the employee had worked the day even though, in actuality, the employee had not reported for work.

The record reflects that a new Supervisor arrived and took the place of the prior Supervisor. The new Supervisor did not know about the prior arrangement. The Claimant took a safety day off from work that the Claimant had an entitlement to receive pursuant to the arrangement that had existed with the former Supervisor. The new Supervisor considered the action to be inappropriate and imposed the disputed discipline.

As this dispute involves discipline, the Carrier has the burden to prove that the circumstances warranted the imposition of discipline. The Carrier failed to meet this burden under the highly unusual circumstances set forth in the record. In particular, the record confirms that the prior Supervisor had approved of the arrangement. As a result, no evidence exists that the Claimant had engaged in dishonesty within the meaning of Rule 1.6.

The record does reflect that the Claimant sought eight and one-half hours for the safety day. The Claimant should have sought eight hours for the safety day. The record fails to prove that the 30 minute difference constituted anything other than an inadvertent and unintentional error under these specific circumstances. The Award therefore shall provide that the claim is sustained.

In reaching this conclusion, the Board finds that any other arguments raised in connection with this matter are not material to a resolution of this precise and rather unique dispute.

AWARD

Claim sustained in accordance with the Findings.

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 24th day of October, 2001.