

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 Employes  
(CSX Transportation, Inc. (formerly The Chesapeake and  
Ohio Railway Company)

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

(1) The dismissal of Track Foreman R. A. Shoemaker for allegedly falsifying company payroll, desertion of duty and engaging in work for another company during his regular tour of duty was harsh, unjust and unreasonable [System File C-D-5091/12(89-995) CON].

(2) The Claimant shall be reinstated with seniority and all other rights unimpaired, he shall have his record cleared of the charges leveled against him and he shall be paid for all time lost, beginning Monday, December 4, 1989 and continuing until he is returned to the Carrier's service."

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.

By letter dated November 3, 1989, the Claimant was directed to attend a Hearing at the Trainmaster's Office in Clearwater, Ontario, on November 13, 1989. The Hearing was in connection with the following charges leveled against the Claimant:

"You are charged with falsifying company payroll as well as desertion of duty, and engaging in work for another company during your regular tour of duty. These charges are resulting from your absence on October 6, 13, and 20, 1989 from Force 5P32, Leamington, Ontario, discovered by Company officers on October 25, 1989."

According to testimony presented at Hearing the Claimant was absent on October 6, 13, and 20. However, on his timeroll he indicated he had worked his normal hours on those three days. To further exacerbate the problem, the Carrier determined through reliable evidence, that during these absences the Claimant was actually performing work for another company. The Claimant was not given permission to be off on any of the days in question.

The Organization contends the Claimant and a co-worker often started work earlier than their scheduled starting times, worked through lunch and stayed beyond their scheduled quitting time. In this manner, they assured the Carrier the forty (40) hours per week of work they claimed. Because the Claimant filled out his payroll forms in advance they always indicated he worked 8:00 A.M. to 4:00 P.M. While this may not have been accurate, as far as, his actual working hours, it was accurate, as far as, the number of hours per week he worked. The Carrier never produced any evidence to contradict the Claimant's assertion that he worked forty (40) hours per week for the Company.

Furthermore, there was no evidence to support a charge of desertion of duty. The Claimant worked his scheduled number of hours for the Carrier and completed his assigned duties. Once the Employee put in his required number of hours work for the Carrier, he was free to work another job if he desired. There was no evidence to show he worked for another company during his tour of duty.

The Carrier's charges were based solely on presumption and speculation. The claim should be sustained.

The Carrier contends that a review of the transcript of the Investigation confirms the Claimant's guilt. Through his own admission he did not work the hours he entered on the Company payroll. He alleges he worked the number of hours for which he was paid, but had no documentation to support this contention.

Any argument from the Claimant that he had an understanding with the Carrier which would allow him to rearrange his schedule was refuted by the testimony of his Supervisor.

There was substantial evidence to show the Claimant had not worked the hours he claimed on his payroll sheet. On the other hand, there was no evidence to substantiate the contentions of the Claimant. Anytime an employee submits a payroll sheet requesting pay for hours s/he did not work s/he is in essence guilty of theft. It is unacceptable to receive money for nonperformance of duty.

The Board believes the penalty issued in this case was appropriate.

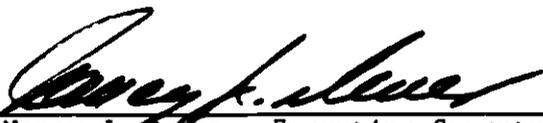
A W A R D

Claim denied.

Form 1  
3e 3

Award No. 28951  
Docket No. MW-29483  
91-3-90-3-418

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1991.