

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29602
Docket No. MW-29871
93-3-91-3-246

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance
(of Way Employes
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The discipline of sixty (60) demerits imposed upon Welder J. R. Zartuche for alleged falsification of the Foreman's Field Labor Information report for December 21, 1989 was arbitrary, capricious, without just and sufficient cause and in violation of the Agreement (System File SAC-1-90/UM-5-90).

(2) The sixty (60) demerits shall be rescinded and the Claimant shall have his record cleared of the charge leveled against him."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 employe or employes involved in this dispute are respectively carrier and employe 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 holds seniority as a welder, and has been in Carrier's service for 16 years. At the time of this dispute, Claimant was under the supervision of a Foreman who was on vacation.

Due to his senior status, Claimant was assigned to be the "leader" of his welding gang in the Foreman's absence. Claimant had fulfilled this assignment on previous occasions and was familiar with the various duties entailed, one of which was to fill out a Foreman's Field Labor Information Report (FFLR). The FFLR form is, among other things, a source pay document. This document is the basis of the dispute.

On December 21, 1989, the Track Supervisor arrived at Griffith, Indiana to conduct a monthly safety meeting. The meeting, which was due to begin at 7:30 A.M., did not actually commence until 7:45 A.M., due to the Claimant's tardiness. When the Claimant arrived he stated that he had experienced car trouble. Further conversation ensued, and the Track Supervisor testified at the subsequent hearing that the dialogue was as follows:

"...the last thing said between Mr. Zartuche and myself before we started the meeting was that I told him that he was late on Thursday (Dec. 14), he was late on Tuesday (Dec 19), and now he is late again on this Thursday (Dec. 21). I told him, it is getting late now. I did make the statement to him it is Christmas and I want to get this meeting started because I was leaving at the end of the day on vacation. At that time we had the meeting and after the meeting, I left the toolhouse and proceeded back to Joliet."

Claimant's perception of the conversation is as follows:

"...when he asked what the problem was in regards to my coming in late which was at 7:40. I told him I had car trouble. I had had car trouble in the past. It was very cold on those particular dates. When I told him I had car trouble he replied to me in a derogatory way that I am always having car trouble. He said it was Christmas time, do not worry, forget it."

In preparing the FFLR report at the end of the day, Claimant indicated he had worked the full eight hours for December 21, 1989. On January 11, 1990, Claimant was charged with:

"Your alleged falsification of the Foreman's Field Labor Information report for M. J. Zartuche's tour of duty on the following date:

December 21, 1989-The report indicates Mr. Zartuche worked his full eight straight time tour of duty."

Hearing was held on January 18, 1990. At that hearing, Claimant admitted to making out the aforementioned report, and following the hearing, the Carrier determined the Claimant had "knowingly and willfully falsified the labor information report for the purpose of obtaining a full day's pay to which he is not entitled." As a result, the Claimant was assessed 60 demerits. The Organization appealed the discipline.

The Organization protests that Claimant did not receive a fair and impartial hearing. In particular, it protests that the Carrier considered Claimant's prior discipline record in assessing the discipline. With respect to the merits of the case, the Organization asserts that the Claimant did not falsify the FFLR report, but merely was following the Track Supervisor's instructions "to forget it." The Organization maintains that the Claimant would not have submitted the full eight hours but for the conversation between him and the Track Supervisor. Further, the Organization contends that the Claimant was not familiar enough with the form, and therefore, "all of the paperwork Claimant submitted should have been double-checked by a Foreman" which would have resulted in the error being corrected.

For its part, Carrier contends that Claimant received a fair and impartial hearing. Moreover, Carrier maintains that Claimant knowingly submitted a fraudulent claim, in "clear violation of General Rule F.3." Further, the Carrier asserts that the Claimant knew precisely how to reflect his true time on the form as he had done so on the same form within the prior week. Finally the Carrier asserts that Claimant could have been dismissed for his actions, and that the imposition of 60 demerits was, in fact, lenient under the circumstances.

There is no evidence on the record to support the Organization's assertion that Claimant failed to receive a fair hearing. While the Carrier may not rely on an employee's past employment record as proof of current alleged misconduct, it certainly may do so when deciding the quantum of discipline, once the misconduct has been proven.

A review of the transcript convinces us that the Claimant has taken a statement by the Track Supervisor out of context, and used it to his advantage. When asked to verify his statement concerning Christmas, the Track Supervisor replied:

"Yes, I can verify that that statement was made...to forget about his being late and not to worry about it. However, I must qualify that. I do not now, nor have I ever, nor will I ever condone falsification of a daily. I did not give him instructions to pay himself eight hours. I told him he was late, don't worry about it. I expected him to show that on his daily. I was going to let it go at that."

This Board finds the Train Supervisor's statement credible and Carrier's argument persuasive. Further, this is not a matter of first impression. In Third Division Award 18087, the Board ruled:

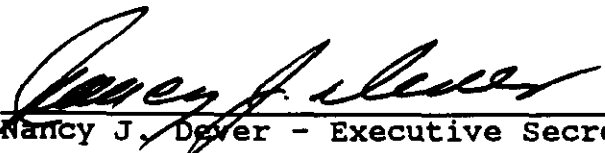
"Contrary to Petitioner's contention, we find the record substantiates Carrier's assessment of claimant's [culpability] in falsifying daily reports of labor for work performed...."

Document falsification, particularly by an employee in a supervisory position, is a serious offense and one which the Carrier cannot condone (Third Division Award 29146). Accordingly, we see no basis for sustaining this claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.