NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Form 1

Award No. 31537
Docket No. MW-31894
96-3-94-3-266

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(SOO Line Railroad Company (former Chicago, Milwaukee,
(St. Paul and Pacific Railroad Company)

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

1. The sixty (60) day suspension imposed upon Assistant Foreman B. N. Ean for alleged "falsification of your second half December 1992 time by paying yourself eight hours straight time on December 28, 1992 ...." was arbitrary, capricious and on the basis of unproven charges (System File C-31-93-T620-01/8-00126 CMP).

2. As a consequence of the violation referred to in Part (1) above, Mr. B. N. Ean's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered with benefits unimpaired."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all of 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.

Claimant did not perform service from December 18 through December 31, 1992. Claimant completed his time roll showing vacation days for December 18, 21, 22, 23, 29, and 30, 1992. He showed himself rendering eight hours service at straight time on December 28, 1992.

Consequently, on January 12, 1993, Claimant was advised to report for an Investigation on January 22, 1993. The notice charged Claimant with "alleged falsification of your second half December 1992 timeroll." The Investigation was held as scheduled, and on February 4, 1993, Claimant was advised that he had been found guilty of the charge and assessed a sixty-day suspension.

The Organization contends that Carrier failed to prove that Claimant intended to falsify the time roll. The Organization contends that Claimant filled out the time roll in a hurried manner and made an honest mistake. The Organization urges that Claimant would have had no reason to falsify the time roll because, as a monthly-rated employee, he was not required to work the day following a holiday to be paid for the holiday.

Carrier contends that Claimant falsified his time roll by claiming eight hours of straight time pay for December 28, 1992, even though he rendered no service on that date. Carrier contends that at the time Claimant submitted his time roll, the Carrier's practice was to require monthly rated employees to work the days immediately before and after holidays to qualify for holiday pay. In Carrier's view, Claimant was aware of this and represented that he had worked on December 28 in order to protect his holiday pay for December 24 and 25. Furthermore, Carrier urges that it is difficult to believe that Claimant would forget the one day between December 18 and December 31 that he worked.

The Board has reviewed the record thoroughly. As an appellate body, we do not find the facts de novo. Rather, we must defer to the findings made on the property as long as they are supported by substantial evidence in the record. We find that there is substantial evidence to support the findings made on the property that Claimant falsified his time roll.

There is no dispute that Claimant paid himself for eight hours on December 28, even though he rendered no service that day. We agree with Carrier that whether

Claimant, as a monthly rated employee, was entitled to holiday pay regardless of whether he worked December 28 is beside the point. Carrier's practice at the time was to require monthly-rated employees to work the days before and after holidays to receive holiday pay. Claimant did not testify to any personal knowledge to the contrary. Thus, even if Carrier and Claimant were mistaken in believing that Claimant had to work December 28 to receive holiday pay for December 24 and 25, their belief provides a strong motive for Claimant to have misrepresented eight hours straight time work on December 28.

Moreover, we agree with Carrier that it is hard to believe that Claimant would have forgotten that he rendered no service during the last two weeks of December (December 18 - 31) and mistakenly believed that he worked one day during that period.

Thus, we conclude that Carrier acted reasonably in inferring that Claimant deliberately falsified his time roll. There being substantial evidence to support the findings made on the property, the claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of July 1996.