Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD SECOND DIVISION

Award No. 8809 Docket No. 8631 2-SLSW-EW-'81

The Second Division consisted of the regular members and in addition Referee James F. Scearce when award was rendered.

Parties to Dispute: (St. Louis Southwestern Railway Company International Brotherhood of Electrical Workers

Dispute: Claim of Employes:

- 1. That the St. Louis Southwestern Railway Company did unjustly apply fortyfive (45) demerits to the personal record of Radio Equipment Installer W. R. Belew for alleged violation of Rule 804 of the Rules and Regulations for the Maintenance of Way Structures.
- 2. That the St. Louis Southwestern Railway Company be ordered to remove the forty-five (45) demerits from the personal record of Radio Equipment Installer W. R. Belew.

Findings:

The Second 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 were given due notice of hearing thereon.

The dispute in this case arises out of a charge against the Claimant for "an act of misconduct and willful disregard" concerning work in which he was involved which, according to the Carrier, resulted in the mis-identification of a cable at its Pine Bluff, Arkansas facility. The Claimant admits to having altered the cable number and apparently contributed to the problem by a refusal to respond as to why he did so upon inquiry. The details of the case against him are confused by incorrect dates in the charging letter: the letter itself is dated March 8, 1979 and he assertedly committed such actions between March 8 and April 12, 1979, requiring a determination of infraction in advance of the act itself; it was later determined that some or all such dates were incorrect. A hearing was held and the Claimant was assessed 45 demerits for his actions.

We find no basis to affirm the Organization's claim that the errors in the "March 8" letter should be fatal to the charges: the Claimant admitted he made such change to the cable identification at the time of discovery of the altered communication block. His demeanor thereafter contributed significantly to the uncertainty as to why such change was effected. But while this Board can affirm the Carrier's actions to that point, it finds no basis to conclude that the claimant's actions were "misconduct or willful disregard" for property. The Carrier's point is wellForm 1 Page 2 Award No. 8809 Docket No. 8631 2-SLSW-EW-'81

taken that proper labelling is essential to its communication network and that its supervisory staff should be apprised of any such changes, but the record suggests that such changes are not always so coordinated and, more importantly, that such changes are possible without some premeditated damage being the resultant intent.

We have carefully read the record and conclude that while the Claimant's removal of the identification numbers may have been in error and that his demeanor when later asked about it was deserving of admonishment, the ascribing by the Carrier in its charging letter of misconduct and willful intent was overreaching in the extreme. If the grievant's work performance was in error by his actions, the charges should have been properly stated. And while we have concluded that the seriously flawed letter of charges was not fatal to the disciplinary action against the Claimant, it was sufficiently at odds with the facts to indicate that the Claimant was not alone in the potential to make mistakes. We shall direct that the number of demerit points be reduced to 20, more properly reflecting the gravity of his improper actions.

AWARD

While discipline is sustained, it is reduced as set out in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Second Division

Attest: Executive Secretary National Railroad Adjustment Board

By

Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of November, 1981.