

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19962  
Docket Number **MW-19996**

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way **Employees**  
(Albany Port District **Commission**

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

(1) The Carrier violated the Agreement when it

- (a) disciplined **Mr. Howard Brown** to the extent of disqualifying him as an Assistant Foreman;
- (b) suspended Mr. Howard **Brown** from employment for a forty-five (45) day period commencing October 23, 1971, ending December 6, 1971;
- (c) suspended **Mr. Joseph Rafferty** from employment for a thirty (30) day period commencing October 23, 1971, ending November 21, 1971,

(2) **As** a consequence of the aforesaid violations

- (a) Mr. Howard Brown be **immediately** returned to service as an Assistant Foreman and **that** he be allowed pay for all time that he has been improperly held out of service as an Assistant Foreman subsequent to October 23, 1971;
- (b) Mr. Joseph Rafferty be allowed pay as a **Trackman** for all time that he has been improperly held out of service from October 23, 1971 **to** December 6, 1972.

OPINION OF BOARD: The two Claimants were charged with unauthorized absence from employment on October 22, 1971. Following a hearing held on November 3, 1971 Claimant Brown was suspended for forty five days and removed from his position as Assistant Foreman and Claimant Rafferty was suspended for a thirty day period.

It is well settled that in this industry the burden of proof in disciplinary matters is squarely upon the Carrier. The Board may not substitute its judgment for that of the Carrier with respect to credibility or weight of evidence; but by the same token, the record of the investigation must reveal substantial evidence to support Carrier's findings. The transcript in this case does not support Carrier's conclusions; it contains no direct testimony whatsoever but merely a **summary** of discussions by those present at the hearing; it contains no positive evidence whatever in support of Carrier's findings of guilt.

With respect to the discipline imposed we shall not deal with the problem of the **removal** of Claimant Brown from his position as Assistant Foreman since by his own admission he gave up his rights ~~to~~ that position and both claimants subsequently left the Carrier's service. In sustaining the claim we shall limit the remedy, then, to making both Claimants whole and removing the discipline from their records.

**FINDINGS:** The Third Division of the **Adjustment** Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That ~~the~~ Carrier and the **Employees** involved in this dispute are respectively **Carrier** and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the **Adjustment** Board has jurisdiction **over the** dispute involved herein; and

That the Agreement was violated.

A w A R D

Claim sustained to the extent of making both Claimants whole for the periods of suspension and removing the discipline from their records.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: -

A. W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1973.