

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24278
Docket Number MW-24173

John B. LaRocco, Referee

PARTIES TO DISPUTE: { (Brotherhood of Maintenance of Way **Employees**
{ (Bangor and **Aroostook** Railroad Company

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

(1) The dismissal of Sub-Foreman Charles H. Boss, Jr. for alleged 'Failure **to perform** your duties as Sub-Foreman in a responsible manner' and for alleged violation of Rules '**110**', '**275**', '**A**', '**284**', '**290**' and '**448**' was without **just and** sufficient cause, unwarranted, on the basis of unproven charges and in **violation** of the Agreement (Carrier's File **149.4.3**).

(2) Sub-Foreman Charles H. Boss, Jr. shall **now** be allowed the benefits prescribed in Section 1(c) of Article IV.

OPINION OF BOARD: Claimant, a Sub-Foreman on the tie gang, was dismissed from service following an investigation held on August **14** and **14**, **1980**. The Carrier had charged Claimant with a number of different offenses. Though the Organization contended the notice of charges was imprecise, we find that the notice dated August **7**, **1980** apprised Claimant and his representative with sufficient details **concerning** the alleged infractions.

At the investigation, several **trackmen** on the tie gang related that on August **5**, **1980**, Claimant drove a motor car (at high speed) **toward** them without warning while they were **working** inside the track. They stepped out of the way just before the **motor** car passed. The Assistant Superintendent of Track and a Machine Operator testified that Claimant improperly **dumped** untreated sewage **from** the outfit's living cars into a ditch along the right of way on June **30**, **1980**. The Carrier also presented evidence indicating Claimant was partially responsible for damage to a personnel trailer which collided with a train. An examination of the trailer after the accident disclosed that the trailer had not been properly secured and that **Claimant** had not placed a derail on the track. Other testimony at the investigation related to Claimant's **harrassment** of a deputy sheriff, his failure to timely file a personal injury report, and his alleged hostile relationship with **some** of the members of the tie gang.

When the Carrier decided upon the measure of discipline to impose on Claimant, the Carrier not only reviewed Claimant's prior record but also relied on a June 8, **1972** letter of Understanding between the Carrier and Claimant. In essence, the **1972** Letter (which had resolved a prior disciplinary matter) stated that Claimant could be discharged if he **committed** any subsequent rule infraction.

Characterizing the Carrier's evidence as gossip, unsubstantiated gripes, and personality conflicts, the Organization contends that there is no credible evidence in the record showing Claimant engaged in any misconduct. In addition, the Organization challenges the Carrier's reliance on the **1972** Letter of

Understanding to justify Claimant's dismissal. According to the Organization, the Carrier's failure to raise the **terms** of the 1972 letter for eight years was an unreasonable delay which prejudiced **Claimant**. Citing the doctrine of **laches**, the **Organization argues** that the Carrier is barred **from** using the 1972 letter against Claimant. The Carrier, on the other hand, submits that there is **over-**whelming evidence demonstrating that Claimant performed his **work in** an inadequate and irresponsible fashion. When Claimant's poor prior discipline record is taken into **account** in conjunction with the 1972 letter, the Carrier contends that dismissal was the appropriate **measure** of discipline.

After carefully reviewing the lengthy record in this case, we conclude that the Carrier presented **substantial** evidence **proving** that Claimant **committed** not just one infraction but several offenses during the **summer** of 1980.

On August 5, 1980, Claimant recklessly operated a **motor** car which could have resulted in serious injury to the **trackmen**. Perhaps Claimant was merely trying to scare his gang. However, his actions were dangerous and went far **beyond** the **usual** interaction found in **track gangs**. Furthermore, Claimant improperly disposed of **untreated** sewage, caused **damage to a personnel trailer** by not observing safety precautions and **harassed** a peace officer. Claimant **has** demonstrated, by his own conduct, **that** he is unable to responsibly **carry out** his duties.

Given Claimant's poor prior record, we do not **find** any justification for reducing the assessed **discipline**. This Board does not need to address the parties **arguments** regarding the effect of the 1972 Letter of **Understanding**. Standing alone, the severity of Claimant's offenses as well as his poor past record constitute an independent basis for upholding the dismissal.

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

That the parties waived oral hearing;

That the Carrier and the **Employes** involved in this dispute are respectively **Carrier** and **Employes** 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 not violated.

A W A R D

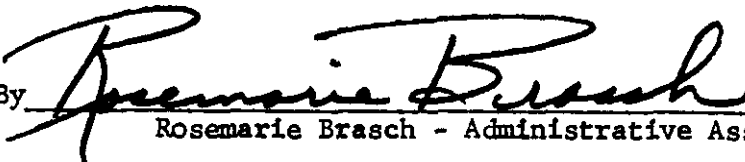
Claim denied.

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Page 3

NATIONALRAILROAD ADJUSTMENT BOARD
By Order of **Third** Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 31st day of March 1983.