

NATIONAL RAILROAD ADJUSTMENT BOARD

TRIED DIVISION

Award Number 24406
Docket Number MW-244

William G. Caples, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Seaboard Coast Line Railroad Company

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

(1) The twelve (12) calendar days of suspension imposed upon Apprentice Foreman Archie Powell for alleged violation of 'Rules 225(b) and 225(c)' was arbitrary, capricious and based upon unproven and disproven charges (System File C-4(13)-AP/12-39(80-43) G).

(2) The claimant's record be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, an Apprentice Foreman while scheduled to work on the Portsmouth Subdivision was instructed to report to Boykins Virginia because an Apprentice Foreman there, who was assisting the Brush Cutter, had a family emergency. The Roadmaster when he talked to Claimant concerning the work to be performed at Boykins advised him his predecessor had requested a "Y" order to protect the work and Claimant should call the dispatcher, find out the work limits so he could put out his "Y" Boards and Advance Warning Boards at their proper locations. Claimant called the dispatcher and obtained the working limits which he claims were given him from Mile Post 57 to Mile Post 47. The Advanced Warning and "Y" Boards were placed for Mile Posts 47 and 57. However, according to the dispatcher's records, the working limits should have been from Mile Post 54 to Mile Post 47. Because of the discrepancy an investigation was held to develop the facts and place the responsibility, if any, of the Claimant in connection with this error. The Claimant was specifically charged with violation of Operating Rules 225(b) and 225(c). Subsequently on the basis of the hearing, the Carrier assessed the Claimant 12 calendar days' suspension, beginning May 2 and ending June 1, 1980. The Organization appealed the suspension through the various stages of appeal to this Board.

This claim involved discipline and it is incumbent upon the Carrier under the long established rule of this Board to maintain the burden of proof in its assessment that discipline is proper, if it is to stand. Although in this record there is conflict as to certain statements there is ample probative evidence in the record to sustain Carrier's burden.

The penalty imposed is the Carrier's judgment and this Board has consistently ruled it will not overrule, reverse or set aside or reduce penalty imposed unless the Claimant can show that the Carrier in assessing the penalty was vindictive, arbitrary or malicious. No such showing was made on this record.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD 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 15th day of June 1983.

Rec'd
9-7-83