

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24499
Docket Number MS-24631

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (John J. Fagan
(
(National Railroad Passenger Corporation

STATEMENT OF CLAIM: "I John J. Fagan (track foreman), at Bryn Mawr Pa. was brought up on charges for filing incorrect 490's on Jan. 16, 1981. The supervisor, John Worster (AMTRAK), contend8 that I put the wrong number coinciding with the rule. - Wheras I was permanently disqualified as a track foreman at the trial of Feb. 5, 1981."

OPINION OF BOARD: Claimant, John J. Fagan, was notified on January 16, 1981 to appear for an investigative hearing on February 5, 1981 to determine facts and place responsibility, if any, with respect to Claimant's alleged violation of Rule 910 of Carrier Operating Rules and Instructions. After the trial Claimant was notified on February 20, 1981 that he had been found guilty as charged and was disqualified as Foreman and Assistant Foreman.

A review of the record shows that Claimant was disqualified for alleged contravention of Rule 910 which reads, in pertinent part:

"Foremen-Track are personally responsible for the submission of verbal and written reports pertinent to their duties as directed by the Supervisor Track or other6 with authority."

Specifically it is alleged that Claimant repeatedly submitted invalid safety observations with respect to a Carrier Safety Program for the period from December 16, 1980 to December 31, 1980.

Since the position of Track Foreman is supervisory in nature the Board finds nothing unreasonable on the part of a Carrier to request that the occupant6 of such positions prepare and submit correct, valid reports in connection with a Safety Program. The record before the Board in the instant case clearly establishes that this requirement existed on this Carrier and that Claimant was aware of his responsibility in this respect. The record also shows that Claimant had previously been reprimanded as well as given a five (5) day suspension from service for his derelictions in this regard.

There is no evidence that Claimant was singled out for discriminatory nor retaliatory treatment. He was accorded a formal hearing at which he was ably represented and permitted to testify as well as cross-examine Carrier's witnesses. There is no indication that the hearing was in any way unfair or in non-compliance with all of the requirements of the applicable Agreement.

Since the record shows that Claimant has, at no time, offered a satisfactory explanation for his failure to make correct reports of safety observations, the Board finds that the disqualification of Claimant as Track Foreman is not excessive nor arbitrary and it perceives no valid basis for disturbing Carrier's decision in that connection.

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 Employee involved in this dispute are respectively Carrier and Employee 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

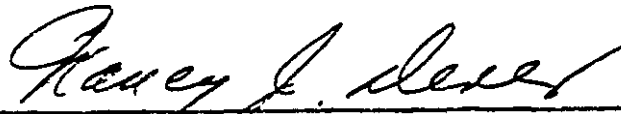
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Dever
Executive Secretary

Dated at Chicago, Illinois this 3rd day of August 1983.

