

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25875  
Docket Number MW-25987

Charlotte Gold, 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 demotion of Painter Foreman L. G. Jackins was arbitrary, without sufficient cause and in violation of the Agreement (Carrier's File 149.4.6)

(2) Mr. L. G. Jackins shall be reinstated as painter foreman with seniority as such unimpaired, his record cleared, compensated for all wage loss suffered and he shall be compensated for travel time and mileage expense incurred attending the investigation held on September 7, 1983."

OPINION OF BOARD: On September 1, 1983, Claimant, a Painter Foreman in Carrier's B & B Sub-department with thirty-two years seniority, was instructed to appear for a formal investigation. He was charged with "negligence, incompetence, lack of judgement, and refusal to follow instructions of your Supervisors while employed as a Painter Foreman, resulting in inefficiency, waste, and exposure of yourself, your crew members, and employees of the Bangor and Aroostook Railroad, to unnecessary safety risks." As a consequence of that investigation, Carrier concluded that Claimant did not meet the requirements of his job and disqualified him as a Painter Foreman, effective September 21, 1983. He retained his Painter seniority.

Carrier's decision was protested by the Organization. When the Organization's claim was not resolved on the property, it was advanced to this Board for a final determination. The Organization argues that Claimant was not granted a fair and impartial hearing because of a number of reasons. Primary among them was Carrier's failure to specify the charges against him and its refusal to grant a temporary postponement of the investigation. Further, Carrier leveled charges against Claimant that were not formulated independent of his past work record. That record, in turn, was used in an attempt to establish his guilt. The Organization concludes that Carrier did not present any credible evidence to support its charge.

Carrier maintains that it has an inherent right to establish minimum performance standards for its Foremen, as well as to disqualify those unable to meet those standards. Based on an evaluation of Claimant's performance over time, Carrier concluded that Claimant should be demoted.

The Board has reviewed the transcript of the investigation which has been made a part of the record of this case. That record reveals that there was sufficient probative evidence adduced at the investigation to support a finding of guilt. There are, however, mitigating circumstances that warrant a review of the discipline imposed.

Claimant became a Painter Foreman on October 12, 1972. The incidents reviewed during the investigation extended over a ten-year period. During that time, Claimant was never subject to progressive discipline and thus received no counselling designed to improve his performance. Demotion may well be appropriate in instances where an employee fails to meet basic minimum requirements, but only after that employee has received sufficient notice of his or her alleged deficiencies and been provided with a reasonable opportunity to correct them. Claimant shall be reinstated as a Painter Foreman with his seniority as a Foreman unimpaired and allowed to displace into a Painter Foreman position as his seniority permits. Claim for compensation is denied.

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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1986.