

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26007

Docket Number MW-26052

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(National Railroad Passenger Corporation (Amtrak))

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

(1) The disciplinary demotion of Track Foreman J. A. Benthall and his permanent disqualification as track foreman and assistant track foreman for alleged violation of Rule 'K' on January 27, 1983 was without just and sufficient cause and unwarranted (System File NEC-BMWE-SD-584D).

(2) Mr. J. A. Benthall's seniority as track foreman and assistant track foreman be restored and unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The basic facts in this case are as follows: On January 27, 1983 Claimant and his Gang were found in the Tool Shanty at Penn Station (New York) ostensibly preparing to conclude the work day an hour and one half prior to their required quitting time. The Gang's tour of duty commenced at 7:30 A. M. and ended at 4:00 P.M. By letter, dated February 9, 1983, Claimant was instructed to appear for trial on February 24, 1983, in connection with his conduct on January 27, 1983. Specifically, the notice stated:

"Violation of Amtrak's Rules of Conduct, General Rule 'K' which reads: 'Employees must report for duty at the designated time and place, attend to their duties during the hours prescribed and comply with their instructions from their supervisor in that on Thursday, January 27, 1983 you were not at your work site at 2:30 P.M., but instead were at the shanty in Penn Station. This was contrary to instructions issued by Track Supervisor B. Flores."

Based upon the investigative record, Claimant was later assessed discipline of permanent disqualification, in all classes of Foreman and Assistant Foreman. This disposition was appealed.

In defense of his petition, Claimant argues that he was not provided the five days advanced notice in writing of the exact charges on which he was to be tried. As such, he contends he was not fully informed of the precise charges proffered against him. He also avers that a Carrier Officer, who was not present at the trial, issued the decision letter following the Investigation.

On substantive grounds, he asserts that even though he was in the Shanty at about 2:30 P.M., he was under the distinct impression that it was 3:30 P.M. He testified at the trial that his watch was broken and unfortunately he was misinformed by another employee that it was 3:30 P.M. Consequently, he believed it was closer to quitting time.

Carrier contends that he was accorded a fair trial and provided every opportunity to rebut the charges. It argues that he flagrantly disregarded his instructions to resume his clean-up activities following his assignment to gauge the guardrail at #31 Frog that day, and thus, violated General Rule K. It observes that the Track Supervisor on the New York Division issued a memorandum on January 21, 1983, explicitly reminding Foreman of the importance of adhering to the starting and quitting times. It asserts that his prior disciplinary record, including a one year's temporary disqualification as Track Foreman and Assistant Foreman, unequivocally demonstrates that he lacks the requisite judgment to fill these positions.

In our review of this case, we concur with Carrier's position. We find nothing in the Trial transcript or the grievance appeals record that would indicate a breach of contractual due process. Claimant was provided every reasonable opportunity to refute the charges and conduct a thoughtful defense. Similarly, we are not convinced by Claimant's defensive assertions that he was mistakenly led astray by a Trackman who allegedly told him it was 3:30 P.M. Given the Track Supervisor's concern for precise adherence to starting and quitting times, it was absolutely incumbent upon Claimant to exercise greater diligence in this regard. From the record, we cannot conclude that he exercised this diligence. Moreover, in a predecessor case involving the same Claimant and the same Carrier, the Board upheld the one year's temporary disqualification alluded to before. In that case, Claimant's supervision of a Track-Surfacing Unit resulted in track conditions deemed unsafe for the passage of trains. In view of his past record and the substantiation of the charges herein, we are compelled to sustain Carrier's disciplinary action. The Claim 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

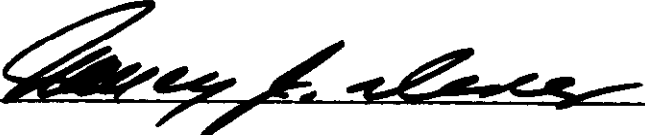
That the Agreement was not violated.

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 25th day of April 1986.