CORRECTED

NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26322
THIRD DIVISION Docket Number MW-26182

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(National Railroad Passenger Corporation
(Amtrak) - Northeast Corridor

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

(1) The disciplinary disqualification of Track Foreman D. McAllister and his suspension ('Time held out of service') for alleged violation of Amtrak Rules of Conduct, General Rules 'K' and 'I' on August 9, 1983 was arbitrary, capricious and on the basis of unproven charges (System File NEC-BMWE-SD-716D).

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

OPINION OF BOARD: At the time this dispute arose Claimant was employed as a Track Foreman, working under the supervision of Assistant Track Supervisor H. Conyers. By letter dated August 9, 1983, Claimant was removed from service. By letter dated August 11, 1983, Claimant was required to report for a" Investigation in connection with the charge that he violated Rule K in that

> "On August 9, 1983, at approximately 1:20 a.m. in the vicinity of Penn Station, New York, you refused to follow instructions issued by Assistant Track Supervisor Conyers concerning your removing 21 track from service."

After the Trial held on September 1, 1983, Claimant was assessed discipline of "time held out of service and permanent disqualification in all classes of Foreman and Assistant Foreman." The Organization timely appealed Carrier's action. Thereafter, it was handled in the usual manner on the property. It is now. before this Board for adjudication.

The Organization contends that Claimant was not insubordinate on the disputed day. It insists that he did not take the track out of service because he was not qualified to do so. According to Claimant, his qualification as an AMT-2 had expired and that the operator

> "was not being familiar with the station and the problem with the machine and I did not want to be responsible for anything happening."

As such, the Organization insists, Claimant did not refuse to perform work. Instead, it argues he simply did not remove Track 21 from service for fear that if anything happened, he and Carrier would be liable. Therefore, the Organization maintains that Carrier improperly disciplined Claimant. Accordingly, it asks that the Claim be sustained.

Carrier submits that Claimant has admitted his guilt. Moreover, Carrier asserts that Claimant failed to raise his AMT-2 status at the time. Thus, it reasons he was properly disciplined. Accordingly, it asks that the Claim be rejected.

A careful review of the record evidence reveals that Claimant improperly refused the work assignment. He was given a direct order to take Track 21 out of service. That order did not place Claimant in any serious risk of bodily harm. In fact, he had performed similar work without objection even after his AMT-2 qualification had expired.

Moreover, the record also reveals that Claimant did not inform his Supervisor, at the time, that he was refusing to do the work because of that expiration. Given these circumstances, Carrier properly found Claimant guilty as charged and was justified in disqualifying him from the Positions of Foreman and Assistant Foreman.

However, the Board is equally convinced that Claimant's suspension was excessive. He was held out of service for 34 days. His previous record had been good. His qualification had, in fact, expired. Under these circumstances, a twenty day suspension is appropriate. Thus, Claimant is to be made whole for the last fourteen days of his 34 calendar day suspension.

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 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 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 13th day of May 1987.