

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26489
Docket Number MU-26130

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (**Brotherhood of Maintenance of Way Employees**
(Consolidated Rail Corporation

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

(1) The discipline ('Disqualification as a foreman commencing June 17, 1983 to August 8, 1983') of R. B. Smith for alleged 'Failure to supervise employees under your jurisdiction in proper procedures of track maintenance according to M.W. 4 and F.R.A. Rules' on June 6 and 9, 1983 was arbitrary, capricious, unwarranted, on the basis of unproven charges and in violation of the Agreement (System Docket CR-319-D).

(2) The claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, with 18 1/2 years of service, was working as a Track Foreman at the time of the incident involved herein. By letter dated June 17, 1983, Claimant was held out of service for "failure to properly perform duties as **MW** Track Foreman" in connection with rail replacement work on June 6 and June 9, 1983. Subsequently Claimant was instructed to appear for a Hearing in connection with the following charges:

"Failure to supervise **employees** under your jurisdiction in proper procedures of track maintenance according to M.W. 4 and F.R.A. Rules, in changing rail on 'A' Track, **Enola**, Pa., June 6 and June 9, 1983, which resulted in conditions causing track to be removed from service."

Following an investigatory Hearing Claimant was notified by letter dated August 8, 1983, that he was found guilty of the charges and was disqualified as a Foreman from June 17, 1983 to August 8, 1983.

Organization argues that the charges in this dispute were vague and not specific and it was impossible for Claimant to know which of the hundreds of Rules and procedures he was alleged to have violated. Further the Organization argues that Claimant was denied a fair Hearing in that the Hearing Officer refused to make certain track inspection reports part of the Transcript. It is also averred that Carrier presented no credible evidence whatever in support of its charges.

Carrier argues that not only were the charges adequate to permit Claimant to mount his defense, but that the evidence clearly established his guilt of the charges. Carrier bases its conclusion on the fact that the Track Supervisor found that two rails, in two different locations, which had been installed by Claimant and his gang, had bars falling off because bolts were not in the bars or were not tightened.

After a careful review of the record and the Transcript, the Board finds that Organization is essentially correct in its positions. The charges were at best marginal in their clarity; it is essential that charges contain more precise information as to the particular irregularities involved. In this dispute they did not, thus making it more difficult for Claimant to prepare his defense. However, it also must be noted that there was no request for a **postponement**. The Hearing Officer made two errors in the conduct of the Hearing which were in themselves fatal flaws: he failed to permit the introduction of inspection reports requested by Claimant's representative and further he did not call as a witness the Track Inspector who found the problems with the rails, but relied on hearsay instead. Most important, Carrier has failed to bear its burden of proof in this dispute. Even though there is some evidence of track problems (partly hearsay) there is nothing to indicate that Claimant failed to supervise his gang properly. The entire position of Carrier is based on defects discovered some eight days after the last day Claimant and his gang worked on the rails in question; there was no evidence dealing with what occurred on the two days when the work was performed. The Claim must be sustained.

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;

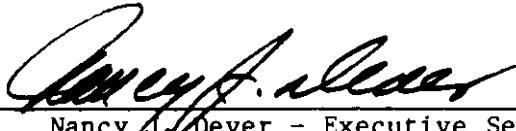
That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of September 1987.