

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26490
Docket Number MW-26133

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 Carrier violated the Agreement when it removed Claimant J. p. Daugherty from his regularly assigned Track Patrol Foreman's position on June 22, 1983 and subsequently disqualified him as a Track Patrol Foreman effective July 25, 1983 to August 23, 1983 (System Docket CR-229-D/MW-3-26).

(2) The claimant's record shall be cleared and he shall be compensated for all wage loss suffered including overtime pay for a total of \$3873.26."

OPINION OF BOARD: Claimant was a Track Patrol Foreman at the time of the incident involved in this dispute. He was charged with failing to properly inspect the track at Mile Post 47.5 resulting in a derailment on June 18, 1983. Following a Hearing Claimant was found guilty and disqualified as a Track Patrol Foreman. Subsequently, after an appeal, the discipline was reduced to disqualification for the period of July 25, 1983, to August 23, 1983. It is that discipline which is the subject of this dispute. The Organization alleges that the charges were not precise and that Carrier failed to prove Claimant's guilt. Carrier, on the other hand, contends that Claimant was clearly guilty of the infractions charged and that the discipline was appropriate.

The Board does not agree with the Organization with respect to the charges. It is apparent that Claimant was able to mount a defense without difficulty and the charges were sufficient to apprise him of the nature of the problem. With respect to the merits, an evaluation of the Transcript of the Investigation reveals ample credible testimony to support Carrier's conclusion with regard to Claimant's culpability. The measure of revised discipline imposed by Carrier cannot be considered to have been harsh, discriminatory or an abuse of discretion. It may not be disturbed.

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;

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

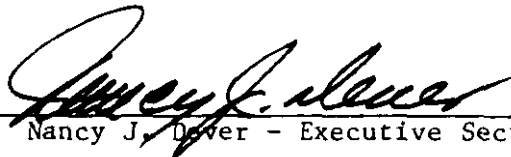
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

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