

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

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

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

(1) The discipline imposed upon Repairman P. Spoljaric for alleged responsibility for 'excessive delay to' and 'inefficient operation of surfacing gang SE-252' and alleged 'failure to follow instructions' concerning arrangement of parts and repairs of Tamper ME-5084, was without just and reasonable cause and on the basis of unproven charges (System Docket CR-994D).

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

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was charged with creating an excessive delay to the surfacing gang in the obtaining of repair parts, inefficient operation of said gang's equipment and failure to follow instructions on the return of equipment associated with his responsibilities as Repairman. After a hearing, the Claimant was found guilty and assessed a fifteen (15) days' suspension. That suspension was later reduced to a five (5) days' suspension.

A complete review of the record as handled on property substantiates the Carrier's findings of guilt for each of the three charges. The position of the Organization that Claimant is not guilty must be rejected due to the clear testimony of the Assistant Supervisor with regard to each of the charges.

Having found that the evidence is sufficient to substantiate Claimant's guilt, the issue this Board must decide is whether the discipline assessed is commensurate with the nature of the offense. Under the circumstances and facts of the case at bar, this Board finds that it is excessive.

There is nothing in the on property record with regard to past discipline to suggest that the instant case is anything other than a first offense. The Carrier noted that it had reviewed his employment record and years of service when it initially reduced discipline. Given what is in the record and the nature of the offense, the Board finds the recorded five (5) days' suspension excessive. In these circumstances of guilt the Claimant's discipline should be reduced to a written reprimand in his record.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of August 1988.