

The Third Division consisted of the regular members and in addition Referee William F. Euker when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(Southern Pacific Transportation Company (Eastern Lines)

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

(1) The Agreement was violated when the Carrier disqualified Claimant J. M. Richard as a track foreman and suspended him from service for thirty (30) days for alleged violation of Rule 351(B) without benefit of a fair and impartial hearing (System File MW-86-70/453-96-A).

(2) The claimant shall be reinstated to his former position with seniority and all other rights unimpaired as well as pay for all wage loss suffered as a result of the violation referred to in Part (1) hereof."

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.

The primary issue confronting the Board in this dispute is whether the claim presented is covered by Discipline Rule 14, or Unjust Treatment Rule 48, and whether the Carrier's assessment of discipline and/or disqualification was proper under the Agreement.

The facts giving rise to the issue are briefly summarized. On March 24, 1986, Claimant, a Track Foreman, was charged with failing to obtain proper authority from the train dispatcher to occupy track for two Maintenance of Way track vehicles on March 20, 1986, in violation of Rule 351 (B), and was assessed thirty days discipline. Under Discipline Rule 14(a), the Claimant had ten days to request an Investigation on these charges, but failing to do so, "the discipline will be considered accepted." It is conceded in the record that no Investigation was requested.

After serving the thirty days discipline, Claimant sought to return to his regular position as Foreman of Extra Gang 112, but was notified in writing that he was disqualified as a Track Foreman effective April 21, 1986, and permitted to resume service as a Track Laborer. The record further discloses an Unjust Treatment Hearing was requested and held on May 7, 1986, and Claimant's disqualification as Foreman was affirmed. The Carrier asserted the disqualification was predicated upon Claimant's continued inability to perform duties assigned as a Track Foreman. As noted at the outset, the claim was appealed on the property with the Organization contending the Claimant was disciplined without a formal Investigation in violation of Rule 14, moreover, he was disciplined twice for the same offense.

The foregoing recitation of facts suggests there is no basis for reaching the conclusion that Rule 14 was violated in this case, inasmuch as Claimant failed to initiate the procedure required under the Rule. Consequently the discipline assessed must be "considered accepted" as the Rule plainly states.

The Claimant's disqualification was premised upon his poor work performance record which was introduced and discussed during the handling on the property. The critical portions of that record, which the Board cannot ignore, are the five dismissals assessed Claimant during his tenure as Foreman, coupled with other disciplinary problems, most of which involved a failure to perform his supervisory duties in a safe manner. It is the Board's opinion that Carrier was entitled to look at the Claimant's total work record, following the latest incident involving an unsafe operation, to decide whether it was in the Carrier or Claimant's best interest to retain him in a supervisory capacity. The Carrier's decision not to grant him another "last chance" cannot, on this record, be considered arbitrary or capricious.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1989.