

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Duluth, Missabe and Iron Range Railway Company

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

(1) The Carrier's disciplinary disqualification of Mr. D. E. Anderson as a Class 'A' and 'B' machine operator for alleged violation of Section 'B' of the Rules of the Engineering Department was excessive and unwarranted.

(2) Mr. D. E. Anderson shall be reinstated as a Class 'A' and 'B' machine operator with seniority as such unimpaired 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.

The Claimant is employed by the Carrier as a machine operator. At the time of the events precipitating the instant dispute, he was assigned as a Class "B" machine operator at Keenan Yard.

On December 16, 1985, Claimant was instructed by the Carrier to clean crossings in the Fairlane area of Keenan Yard with Swingloader 15. Centralized Traffic Control (CTC) was installed at the Claimant's work site. The Claimant allegedly fouled the track at Norway Ridge without obtaining permission from the CTC Dispatcher.

Claimant was subsequently directed to attend an Investigation in connection with his alleged failure to properly perform his duties '... on December 16, 1985, when ... operating SL-15 at Norway Ridge."

The Investigation was held on January 23, 1986. That same day, a second Investigation was held to determine whether Claimant improperly operated a Swingloader on December 18, 1985, resulting in an accident and damage to a pick-up truck owned by a member of the public. On that charge, Claimant was found guilty and suspended for five working days. No claim was initiated on that particular charge.

Following the Investigation concerning the instant matter, Claimant was found guilty of this charge as well. As a result, Claimant was thereafter notified that his rights to operate "Class A" and "Class B" machinery were removed.

In its Submission before this Board, the Organization has advanced essentially three arguments in support of its contention that Carrier's action was unjust and improper. First, it asserts that Carrier's letter of charge did not set forth with any precision or specificity the charges leveled against the Claimant in accordance with Rule 10(b) of the parties' collective bargaining agreement. Second, the Employees maintain that Carrier failed to present any probative evidence that Claimant failed in his duties as machine operator on the date in question, and therefore Claimant could not properly have been found guilty of any rules violations. Third, the Organization contends that the offense, even if proven, did not warrant disqualification of the Claimant as a machine operator of "Class A" and "Class B" machinery.

The Board has reviewed the record in its entirety and has carefully examined the correspondence between the parties during the handling of this dispute on the property. We find absent here any evidence that the Organization raised a question concerning the specificity of the charges or that any objection was made as to the Carrier's alleged failure of proof prior to the submission of this case before the Board. Even taking the correspondence from the Organization in its most favorable light, it is quite clear that there were no contentions raised during the on-property handling of this matter other than the complaint concerning the level of discipline.

One of the most fundamental and well-established precepts in cases before the National Railroad Adjustment Board is that arguments made on appeal must be limited to those which were made during the handling of the case on the property. This Board cannot consider issues raised for the first time on appeal. Accordingly, questions as to the sufficiency of the charges and the weight of the evidence, having never been advanced by the Organization prior hereto, must now be deemed waived.

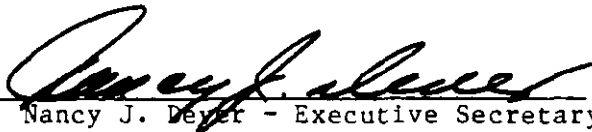
The only issue, then, that is properly joined for consideration is whether the demotion of the Claimant was reasonable and proper. As to that point, we quite agree with Carrier that its primary consideration is to ensure a maximum of safety in the handling of trains and equipment. That high level of safety would be jeopardized if Carrier is required to operate with employees who have demonstrated a lack of ability to respond to rules and warnings such as is shown here. Claimant has a record of repeated failures in this regard, we note. Carrier, recognizing its responsibility for lives and property, has determined that it should not further risk the handling of "Class A" and "Class B" machinery to this employee. Under all the circumstances, we conclude that Carrier's determination is not an arbitrary or capricious one. The Claim, therefore, must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1990.