

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Chicago, Missouri and Western Railway Company

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

(1) The disqualification as a track foreman and fifteen (15) days of suspension imposed upon Mr. M. W. Deppe for alleged insubordination in that he allegedly failed to carry out duties assigned by Roadmaster M. J. Brefeld and was allegedly quarrelsome and allegedly refused to repair tracks once notified by Supervisor R. T. Peinetti, and for alleged failure to properly remove tracks from service on September 24, 1988 was arbitrary, capricious and on the basis of unproven charges.

(2) The Claimant shall have his record cleared of the charges leveled against him, he shall have his track foreman's seniority restored 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.

Claimant, who was employed as a Track Foreman at Carrier's East St. Louis, Illinois, facility, had approximately sixteen (16) years of service and seniority within the Maintenance of Way Department. While the record does not specifically identify the length of time during which Claimant had functioned as a Track Foreman, it contains evidence that he had been a Track Foreman, at least, since 1987. As such he could be considered a seasoned Track Foreman as opposed to one who had little experience.

The incidents which form the basis of this dispute occurred on Saturday, September 24, 1988. Claimant was instructed by notice dated October 6, 1988, to appear for a formal Investigation on October 12, 1988, in connection with a four (4) part charge, namely:

- "1. Insubordination in connection with failing to carry out duties assigned to you by Roadmaster M. J. Brefeld, concerning completion of repairs of track on the old main.
2. Being quarrelsome during a telephone conversation with Supervisor of Operation R. T. Peinetti.
3. Insubordination in connection with refusing to repair tracks once notified of there (sic) need by the Supervisor of Operation R. T. Peinetti.
4. Failing to properly remove tracks from service when you failed to notify the Supervisor of Operation of tracks removed from service by you."

The Investigation was held as scheduled and there is no question from this record but that Claimant was accorded all of the due process rights to which he was entitled under the existing Rules Agreement.

Following the Investigation, Claimant was informed that he had been found to be at fault in connection with the charges and, as a result, was suspended fifteen (15) working days and disqualified as a Foreman. This discipline was appealed on Claimant's behalf through the normal on-property grievance procedures. During the appeals process, Carrier acknowledged that Charge No. 4 had not been substantiated by the Investigation record and it was "stricken from Mr. Deppe's file." Inasmuch as no satisfactory resolution could be reached on the remaining three charges, they form the basis of the Organization's request to this Board for a final adjudication of the matter.

This Board has studied the Investigation transcript and all of the on-property communications in connection with this case. We are convinced by the more than substantial evidence that Claimant was at fault in connection with Charge Nos. 1, 2, and 3.

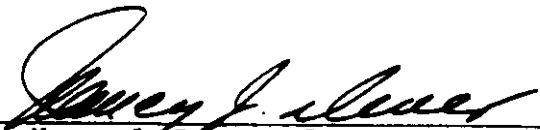
The discipline was not arbitrary, excessive or capricious in light of the proven offenses. This Board will not substitute its judgment for that of the Carrier where, as here, the assessed discipline does not exceed the bounds of reasonable action.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of March 1991.