

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  
(  
(CSX Transportation, Inc. (former Chesapeake  
( and Ohio Railway Company-Southern Region)

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

(1) The removal of all track foreman and assistant foreman seniority rights and the twenty (20) days of suspension imposed upon Mr. R. Smith and the ten (10) days of suspension imposed upon Messrs. F. Dawson, G. Garza, T. J. Ensmen, B. Thompson and H. Napper for alleged failure to perform their duties on December 13, 1988 was arbitrary, capricious and on the basis of unproven charges [System File C-4D-4619/12(89-108) CON].

(2) Claimant Smith shall have his seniority as a track foreman and assistant foreman restored unimpaired, the Claimants shall have their records cleared of the charges leveled against them and they shall be paid 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 employee or employees involved in this dispute are respectively carrier and employees 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.

This case concerns itself with a Maintenance of Way Foreman and five (5) other track department employees who were assigned to work for Carrier at Presque Isle, Ohio. Their assigned tour of duty was 7:30 AM to 4:00 PM with a 1/2 hour lunch period. On December 13, 1988, all of the Claimants were observed by the Roadmaster and the Assistant Roadmaster at approximately 2:20 PM in the lunch room headquarters at the Trackman's building at Presque Isle. At that time the Claimants were all engaged in activities which did not relate to the performance of their maintenance of way duties. Some were playing cards, others were reading newspapers, still others were just standing and watching.

All six (6) Claimants were subsequently instructed to appear for an Investigation scheduled for December 29, 1988, in connection with a charge of engaging in unauthorized activities rather than performing assigned duties. The Investigation was postponed to and held on January 10, 1989, at which time all of the Claimants were present and represented.

Following the completion of the Investigation, Claimant Smith was assessed discipline in the form of a twenty (20) actual assigned workdays suspension plus the removal of his Foreman and Assistant Foreman rights. The other five (5) Claimants were each assessed discipline in the form of a ten (10) actual assigned workday suspension.

Appeals on behalf of all six (6) Claimants were initiated by the Organization and handled in the usual manner through the normal on-property grievance machinery. Failing to reach a satisfactory resolution of the matter during the on-property handling, the parties have come to this Board for final adjudication of the dispute.

In this, as in almost all discipline cases, the Investigation transcript contains contradictory and conflicting versions of the events involved. We, as an appellate review Board, cannot resolve contradictions and conflicts in testimony. We have reviewed the Investigation transcript and are convinced that there is substantial credible evidence in the record to support the conclusion that the Claimants were properly charged and found responsible for the violations as outlined in the charges and the notices of discipline.

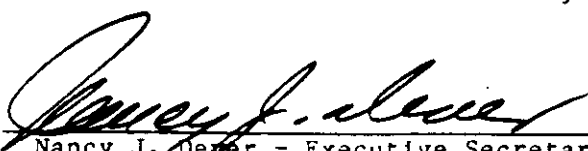
We have reviewed the Organization's allegations and considered their arguments relative to Carrier's alleged "scatter gun" approach to this case as well as their contention that Claimants' "due process rights" were somehow violated. We do not find these arguments and contentions to be convincing. They are therefore rejected.

The suspension assessed against the Foreman and the five (5) other employees was not arbitrary, capricious or excessive in light of the proven offenses. We do, however, believe that the additional discipline of demotion assessed against the Foreman was excessive. It is our belief that the time that he has lost as a Foreman since this incident is sufficient to impress upon him the need to accept the greater responsibility which accompanies a Foreman position and to more closely supervise those under his jurisdiction. Therefore, it is our conclusion that the suspensions as assessed must stand. It is our further conclusion that Claimant Smith should have his Foreman and Assistant Foreman rights restored consistent with applicable Agreement rules provisions relative to his exercise of such restored Foreman rights. No compensation of any kind is due in this case.

#### A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dwyer - Executive Secretary

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