

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29484
Docket No. MW-29971
93-3-91-3-365

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

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The disqualification of I&R Foreman C. S. Davis for his alleged failure to detect defects and alleged failure to follow instructions on March 5, 1990 was arbitrary, capricious, unjust and an abuse of the Carrier's discretion (System Docket MW-1124).

(2) Claimant C. S. Davis' record shall be cleared of the charges leveled against him, he shall be returned to service as an I&R Foreman and 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 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.

Following a Hearing, Claimant was disqualified as an Inspection and Repair Foreman for failing to detect FRA defects and failing to follow instructions. According to testimony at the Hearing, Claimant performed inspections on March 1 and 7, 1990. On March 9, 1990, the Supervisor of Track detected four locations where the track gauge was 58 inches and several other locations where the gauge was between 57 3/4 inches and 58 inches. Standard gauge is 56 1/2 inches, and gauge in excess of 57 3/4 inches is a defect for Class 1 track. Testimony also established that Claimant had received written instructions on March 5, 1990, that this standard would apply, and that track in excess of this standard must be repaired the same day or taken out of service.

The crux of the Organization's argument is that Carrier has failed to establish that the defects which were detected on March 9, 1990, were present when Claimant made his inspections on March 1 and 7, 1990. Carrier asserts it relied upon the Track Supervisor's testimony that the defects he found would have taken some time to develop, and would not have occurred within a couple of days. We find that Carrier's reliance upon this testimony was not unreasonable. Therefore, there was substantial evidence to support the charge against Claimant. We do not find merit in the procedural arguments raised by the Organization.


Turning to the quantum of discipline imposed, we find that Claimant, at the time of this incident, had fifteen years of service with the Carrier, twelve of which were as an Inspection and Repair Foreman. During that period of time, Claimant has had no more than a single reprimand. Under the circumstances, we conclude a permanent disqualification is excessive. Accordingly, Claimant is to be reinstated to his position as Inspection and Repair Foreman, with seniority unimpaired, but without compensation for time lost.

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 21st day of January 1993.