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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

JAN - 5 1995

G. L. HART

Award No. 30636
Docket No. MW-29342
94-3-90-3-257

The Third Division consisted of the regular members and in addition Referee Gil Vernon 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 disciplinary disqualification of Track Foreman P. H. Jackson effective at the end of his tour of duty January 17, 1989, was extremely unjust, completely unwarranted, excessive, an abuse of the Carrier's discretion and in violation of the Agreement (System File MW-89-61/481-57-A SPE)
- (2) Mr. P. H. Jackson's seniority as track foreman and assistant track foreman shall be restored and he shall be compensated for any wage loss suffered as a result of his disqualification."

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 employee 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 therein.

Parties to said dispute waived right of appearance at hearing thereon.

In order to understand the facts and arguments of this case, it is necessary to understand that under the relevant Agreement provisions, the Carrier is entitled to discipline an employee prior to an Investigation. Once disciplined, the employee can request a disciplinary Investigation or hearing under Rule 14.

On January 17, 1989, the Carrier sent the following notice to the Claimant:

"Effective at the end of your tour of duty January 17, 1989, you are hereby disqualified as a Track Foreman and Assistant Track Foreman, due to your continued failure to properly maintain records and prescribed records of labor and materials.

You may exercise your seniority rights, in any other class in which you hold seniority."

The Claimant requested a disciplinary Investigation on January 23, 1989. The Carrier's response was as follows:

"Reference your letter of January 23, 1989.

As your disqualification was not a disciplinary action, your request for a hearing under provisions of Article 14 of the agreement is denied. However, you are entitled to an unjust treatment conference under Article 49 of the agreement.

This conference will be held Tuesday, February 21, 1989 at 1:00 P.M., in the Roadmaster's office in Dallas, 7600 South Central Expressway.

You may be assisted by one or more duty accredited representatives in this conference."

The unjust treatment hearing was held as scheduled and subsequent thereto, the following letter was sent to the Claimant:

"Reference conference held on March 7, 1989 at 2:05pm in the Roadmaster's office, Dallas, Texas. This conference was held at your request concerning your disqualification as Foreman and Assistant Foreman on January 17, 1989, but at that time was postponed at your request.

Those in attendance at this conference in addition to yourself were: Mr. M. E. Hanks, Assistant Chairman BMWE, Mr. E. L. Alcala, Roadmaster Dallas District, and myself, J. W. Blasingame, Division Engineer.

We started the conference by ascertaining that you understand the qualifications and duties as a foreman and these duties include proper preparation of reports. You agreed that you did understand these qualifications and duties. I stated to you that the reason for your disqualification was your continued failure to properly fulfill your responsibilities and duties as a foreman and discussed in detail your failures to maintain proper records and reports as required in your position. We went over your December timeroll in detail and it was pointed out to you where you had shown men working that were not shown on record as being there. These discrepancies were found when you went on vacation on December 12, 1988 and action taken by Roadmaster to see that payments were made correctly.

We also discussed two other instances in 1988 in which discipline was assessed account your failure to properly maintain records. Mr. Hanks pointed out that these instances of discipline were being appealed to the 3rd Division Labor Board.

You were asked if you had an explanation why the records were not properly filled out between December 1 and 9, 1988. You talked about the lines not lining up in the book and then about people not being there, that were actually there. It was pointed out that the records show you had 10 people on the payroll on December 1 and you showed time for 10 people. But you did not in all instances show time for the people that were there.

Mr. Hanks stated he did not feel you should be disqualified but allowed to return to your foreman's job and be put on probation. If you did not properly fulfill your duties during the probationary time, you could be again disqualified without a hearing or conference being afforded you. Mr. Hanks stated that you would have to be agreeable in terms of any agreement that would be made.

I advised that I would take this under consideration and would advise in the near future my decision concerning this suggestion. It was then pointed out that your old foreman's position had been abolished and if the agreement was made and agreed to by all parties, you would be allowed to exercise your seniority to the foreman's rights.

This completed the conference at 3:05pm."

The Organization challenges the Carrier's action on both its merits and procedural grounds. Procedurally, it contends the Claimant was disciplined and that the Carrier improperly denied him his rights to an Investigation under Rule 14.

With respect to this issue, the Board notes that a review of the record fails to reveal that on the property the Organization ever raised the Rule 14 argument. Accordingly, the Board is without jurisdiction to consider it.

Accepting that the case before us is a disqualification/unjust treatment issue and not a discipline matter, the Board finds no basis in the record to conclude that the Carrier abused its discretion. The Claimant's failings were rather fundamental and were certainly enough to reasonably undermine the necessary confidence a Carrier must have in its foreman.

In view of the foregoing, the claim is denied.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of December 1994.