

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33853
Docket No. MW-34085
99-3-97-3-627**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Soo Line Railroad Company (former Chicago, Milwaukee,
(St. Paul and Pacific Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [sixty (60) day suspension] imposed upon Machine Operator D. A. Simpson for alleged violation of General Code of Operating Rules 1.6, 1.13 and 1.14, in connection with the charges of allegedly reporting to a work location other than that required for non-headquartered employees, failure to comply with instructions of the Nahant section foreman on July 6, 1995 and directing inappropriate and profane language at supervisor and Company officials on July 7, 1995, was arbitrary, capricious and on the basis of unproven charges (System File D-33-95-550-048/8-00258 CMP).**
- (2) As a consequence of the violations referred to in Part (1) above, the Claimant’s record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered with benefits unimpaired.”**

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 herein.

Parties to said dispute were given due notice of hearing thereon.

On July 18, 1995, Carrier directed Claimant to appear for an Investigation on July 25, 1995. The notice charged Claimant with alleged neglect of the weed mower assigned to him, claiming excessive mileage on his expense report, reporting to a work location other than that required for non-headquartered employees, failing to comply with the instructions of the Nahant Section Foreman on July 6, 1995, directing inappropriate and profane language at a Supervisor and Carrier officials on July 7, 1995, failure to protect his assignment on July 10, 1995, injury on July 11, 1995, and failure to protect his assignment on July 11, 12, 13, 14, 17, and 18, 1995. The Hearing was postponed to and begun on August 23, 1995. It concluded on August 24, 1995. On September 7, 1995, Carrier advised Claimant that he had been found guilty of claiming excessive mileage on his June 1995 expense report, reporting to a work location other than that required for non-headquartered employees, failing to comply with the instructions of the Nahant Section Foreman on July 6, 1995, and directing inappropriate and profane language at a Supervisor and Carrier officials on July 7, 1995. Claimant was assessed a 60-day suspension.

The Organization contends that Carrier failed to prove the charges. It further maintains that Claimant was the victim of disparate treatment and that the penalty assessed was arbitrary, capricious and excessive. Carrier responds that it proved the charges by substantial evidence, that Claimant was treated fairly and that the 60-day suspension was warranted.

The Board reviewed the record carefully. We find that Carrier proved the charges by substantial evidence. We shall consider each charge in turn.

With respect to the charge that Claimant claimed excessive mileage on his June 1995 expense report, the record reflects that Claimant initially sought reimbursement for mileage that the Roadmaster at Savanna, Illinois, questioned as excessive. Specifically, the Roadmaster questioned the mileage that Claimant sought on the ground that Claimant was entitled to mileage from the closest suitable lodging to the location of his machine, but was claiming more than that amount. When the Roadmaster refused

to approve the amount claimed, Claimant submitted a revised expense claim with substantially less mileage claimed. Although Claimant testified that he revised the expense claim to avoid confrontation with the Roadmaster and that it did not reflect an admission that the initial claim was inflated, Carrier was not required to accept such self-serving testimony as credible. Indeed, the record reflects that Claimant engaged in other confrontations with the Roadmaster. Claimant's own conduct impeached his explanation for revising his mileage claim downward. We conclude that the finding made on the property that Claimant submitted an excessive mileage claim is supported by substantial evidence.

With respect to the charge that Claimant failed to report to the proper work location for a non-headquartered employee, the record reflects that there was no dispute that, as a Machine Operator, Claimant was to report to the location of his machine. Furthermore, there was no dispute that on July 6, 1995, Claimant reported to Nahant, Iowa, even though his weed mower machine was located at Muscatine, Iowa.

With respect to the charge that Claimant failed to comply with the instructions of the Nahant Foreman on July 6, 1995, the record reflects that, upon reporting to Nahant instead of Muscatine, the Nahant Section Foreman advised Claimant to assist the Section Crew with a derailment at that location. There is no dispute that Claimant refused to provide such assistance on the ground that the Nahant Foreman was not his boss. Claimant maintained that the only superior from whom he was to accept direction was the Savanna Roadmaster. However, the Roadmaster testified that he had advised Claimant that not only was he Claimant's supervisor, but that Claimant also reported to the Foreman at the location where he was working. The charge thus presented a conflict in the testimony of Claimant and the Savanna Roadmaster.

As an appellate body, generally we defer to credibility findings made on the property. In the instant case, we see no reason to depart from this general rule. Indeed, Claimant's own testimony on this point was inconsistent. On the one hand, in explaining why he reported to Nahant when his machine was at Muscatine, Claimant stated that he did so to check on whether there was work for him to do at Nahant. However, when advised by the Nahant Foreman that there was work for him to do there, Claimant refused to do the work. Claimant's insubordination was testified to by the Nahant Foreman and by two Laborers and a Welding Foreman. The charge was proven by substantial evidence.

With respect to the charge that Claimant directed profane and inappropriate language at a Supervisor and at Carrier officials, the record established that on July 7, 1995, Claimant was interviewed by the Savanna Roadmaster in the presence of the Trainmaster at Muscatine and the Project Roadmaster at West Davenport. All three testified to Claimant's use of profanity and inappropriate language in response to the Savanna Roadmaster's asking him about his refusal to assist the Nahant Foreman the day before. Clearly, there was substantial evidence in support of this charge.

The Organization has alleged that Claimant was the victim of disparate treatment but there is no evidence in the record to support that allegation. On the contrary, the record reflects that Claimant was treated fairly and impartially. Indeed, Carrier did not find Claimant guilty of all charges, but only of those charges as were proven during the Hearing.

The record reflects a pattern of conduct by Claimant whereby he was determined to do whatever he believed he should do, regardless of the rules or the requirements of his Supervisors. Under these circumstances, we are unable to say that the penalty assessed was arbitrary, capricious or excessive.

AWARD

Claim denied.

ORDER

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 21st day of December 1999.