

Award No. 4148

Docket No. MW-4099

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that O. L. Tallman be returned to his position of Section Foreman at Lockridge, Iowa, and be allowed pay for all time he has been improperly held out of service subsequent to May 16, 1947.

OPINION OF BOARD: This is a discipline case involving alleged irregularities in the handling of work by a section foreman, one O. L. Tallman, on the 29th and 30th of April 1947. The irregularities consisted of alleged failure to work his crew between the hours of 10:30 a. m. and 12:00 Noon on April 29th, and of bringing the crew back to the tool house at 3:45 P. M. instead of 4:30 P. M. (regular quitting time) on April 30, 1947, and further of not properly supervising said crew after return to the tool house until quitting time. After investigation on May 9, 1947, and hearing on May 21, 1947, Tallman was censured and his services restricted to section laborer. There is no question raised with respect to Carrier not having afforded Claimant a fair hearing. The substance of the Employees' position is that the charges were not proven. Carrier contends that (1) the case was adjusted on the property and hence the Board should have no jurisdiction, (2) in any event the charges were proven.

There is merit in the Carrier's first contention. The file reveals that the General Chairman who represented Tallman at the hearing under date of June 12, 1947, wrote to the Carrier's General Manager appealing from the General Superintendent's decision saying in the last paragraph:

"Feeling that the discipline in this case is a bit severe and considering the many years of service as foreman by Mr. Tallman, we would appreciate discussing this case with you at your earliest opportunity."

Then on July 7, 1947, the Carrier's General Manager wrote to the General Chairman referring to discussion of that date and saying in effect that he (the General Manager) felt that Tallman should work as a laborer for at least six months and then would be given consideration for return to his former position of foreman. In reply to this letter, the General Chairman states:

"I wish to thank you for your promptness in this matter and will convey the contents of your letter to Mr. Tallman and explain to him

that he must show a willingness to follow the instructions and advice of his superior officers and prove to them that he is endeavoring to make a faithful employee."

It appears to us that there is a note of finality in these words of the General Chairman. If he had stated that he would discuss the matter with Mr. Tallman and communicate with the General Manager after such discussion we could view the letter as indicating a desire to continue the discussion of the discipline. There is little doubt in our minds that it was the intention of the General Chairman to consider the matter closed on that note but when confronted with a refusal by Tallman to accept the Carrier's decision, this claim was filed. The settlement of disputes on the property is to be encouraged and certainly such settlements cannot be achieved if, in adjustments of grievances, the Carrier's representative cannot be considered to bind the Carrier and vice versa if the Union representative cannot be considered to bind the employees.

We do not, however, base our decision on this ground alone. Because of the seriousness of the case we have carefully examined the record and the transcript of testimony taken. From this it appears that the Carrier was eminently fair in affording full opportunity to the Claimant to defend the charges against him. There is conflict in the testimony with respect to whether or not it was raining between the hours of 10:30 A. M. and 11:40 A. M. on the 29th, that being the explanation offered by Tallman at the hearing as to why his crew was not working, and further with respect to the performance of work by Tallman and his crew after their return to the tool house on April 30th (the reason for the early arrival at the tool house was apparently satisfactorily explained at the hearing). As trier of the facts, we might have resolved these conflicts differently than the hearing official but that is not the test. It is so well established as not to require the citation of precedents that, in discipline cases, it is not the function of this Board to resolve conflicts of evidence. It is enough that the evidence be such that, if believed, it will support the findings of the Carrier. The evidence adduced at the hearing in our opinion meets this test and accordingly we shall not disturb the Carrier's findings. The Employees have asked us to consider an affidavit of a farmer with respect to weather conditions near the place in question on April 29th. This affidavit is sworn to more than three months after the date of the hearing. We believe that ample opportunity was afforded Claimant to present such evidence as he deemed fit at the hearing. In any event the evidence contained in said affidavit is merely cumulative and would merely add to the conflict of evidence at the hearing which was already resolved against the Claimant. For these reasons we do not deem it necessary to rule on its admissibility.

The Employees have objected to Carrier attempting to prove the commission of the specific offenses charged to Claimant on April 29th and 30th by citing incidents in the tenure of Tallman's employment which showed that on various occasions he was called upon to account for quitting ahead of time, failure to perform a full day's work, was questioned as to the whereabouts of his gang and as to irregularities in service of a section foreman at another location. We do not accept this evidence as proving the particular offense charged but we do feel that the Carrier was within its rights in considering such things in the assessment of the punishment, which punishment we do not consider as arbitrary or capricious.

We hold that the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of October, 1948.