Award No. 14573
Docket No. MW-14373

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CENTRAL OF GEORGIA RAILWAY COMPANY

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

(1) The dismissal of Section Foreman A. C. Crawford was without just and sufficient cause and on the basis of an investigation which was neither fair nor impartial. (Carrier's Docket MW-9297, File MW-3093.)

(2) Section Foreman A. C. Crawford be reinstated to the service with his vacation and seniority rights unimpaired and that he be paid for all time lost.

OPINION OF BOARD: Claimant A. C. Crawford was employed by Carrier for about twenty years. He became a foreman in 1946. From 1960 to April 1962 he was the regularly assigned section foreman on District No. 3, which included the Eatonton, (Georgia) District to Mile Post S-210.3. Part of his duties, as described in Bulletin No. 1385, were to

"Be familiar with, and keep his supervisor posted as to, the condition of all tracks in this assigned territory, to make necessary repairs that he and one laborer, assigned to him to motor with him over the assigned territory, can make. If unable to make such repairs, he will afford proper protection, notify the Dispatcher, and his supervisor, who will arrange for a maintenance or extra gang or other track forces to make repairs as rapidly as necessary, and the foreman will perform such other duties as assigned to him and will keep the time of all men under his supervision. . . ."

On April 17, 1962 Claimant (and a track laborer) traveled by motor car from Gordon to Eatonton and return. During the course of the day he pulled up a rail or a rail and half about seven inches at Mile Post 185.8. Crawford says that, at day's end, he told Apprentice Supervisor J. T. Worthy (who was relieving his regular supervisor) about "the whole track, and . . . about pulling up two more places, the worst places that was over there that day." He placed no slow orders.

On April 17, Division Engineer J. G. Watwood made a track inspection trip on the Eatonton District, along with Process Superintendent of Track J. W. Lee and Assistant Process Superintendent J. P. Wilson. They made another inspection on April 18. In the territory covered by Claimant on

April 17 these men found several conditions they deemed to be unsafe. Some corrective measures were ordered and some precautionary measures were taken.

On April 19 Apprentice Supervisor Worthy informed Claimant he was suspended and handed him a letter dated April 18 and signed by Superintendent J. A. Ryle. This letter stated:

> "Please arrange to attend formal investigation to be held in Superintendent's office at Macon, Georgia, at 2:30 P. M. Monday, April 23, 1962.
>
> You will be charged in this investigation with your failure to make necessary repairs to track or afford proper protection, notify dispatcher and report track conditions to Supervisor that were found to exist at Mile Post A-200.5, A-200.1, A-185.8, A-184.8, A-183.7, A-180.8, A-180.6, and A-180.5, Eatonton District, at which time you were employed as Section Foreman on District No. 3, April 17, 1962, which is in violation of Operating and Maintenance Rules 1258, 1259 and special instructions as stipulated in bulletin No. 11385 dated May 25, 1960.
>
> You may have representatives and/or witnesses present at this investigation, as provided by your schedule Agreement."

The investigation hearing was postponed to April 26, at Claimant's request. Superintendent Ryle presided at this hearing, at which testimony was presented by Messrs. Worthy, Watwood, Lee, Wilson and Crawford.

On April 30 Superintendent Ryle wrote Claimant:

> "For your failure to comply with Operating and Maintenance Rules 1258 and 1259, also special instructions as stipulated in bulletin No. 1385 dated May 25, 1960, and your past record, you are hereby dismissed from the service of the Central of Georgia Railway Company."

Petitioner alleges that Management's action was improper and, consequently, Crawford should be reinstated with back pay. It argues, in substance, as follows:

1. Carrier's April 18 notification to Claimant did not conform to Rule 13(b) requirements. This Rule states, in part, that:

> "No employe shall be discharged or disciplined without a fair hearing. Suspension in proper cases, pending hearing, shall not be deemed a violation of this rule. The hearing must be held within ten (10) days after the cause. Before the hearing the employe will be informed in writing of the precise charge against him. . . ."

Petitioner states that the April 18 letter "noted multiple charges, which is not permitted in accordance with precise charges of the rule." Moreover, Carrier's failure to inform Claimant that its charges concerned the surface and cross level of the track deprived him of the protection guaranteed by Rule 13(b).

2. Carrier failed to comply with Rule 13(b)'s requirement of a "fair hearing" by permitting its Superintendent to prefer the charges, serve as the Board of Inquiry, and then make the determination. This Division, it notes, has frequently held that a single officer should not serve as prosecutor, Judge and Jury (Awards 4317, 6087 and 8088).

3. Claimant was not negligent. The condition of the track on April 17-18 was of Carrier's own making. Normal maintenance had been deferred and Claimant's repeated requests for men and material had gone unheeded. If the track was unsafe when inspected by Carrier officials, it became unsafe after Claimant's inspection. Moreover, Claimant told his supervisor, on April 17, that the track was rough, unstable, and in need of repairs.

4. Carrier's April 17-18 inspection, performed immediately after Claimant's regular supervisor went on vacation, constituted a "calculated plan" to penalize Crawford because he had filed other claims.

5. Claimant's record of 20 years, with no charges for similar offenses, was not given any consideration. The penalty of discharge was excessive, unfair and unjust.

Carrier, on the other hand, asserts that (1) Crawford was properly charged, (2) he was accorded a fair and impartial hearing, (3) the evidence showed he was guilty of gross negligence, and (4) the penalty was justified on the basis of the nature of his infraction and his past record.

After carefully reviewing the transcript, the other evidence, and the arguments, it is our conclusion that Petitioner's position cannot be sustained. The following considerations are important.

1. Procedure under Rule 13 (b). The only protest voiced at the investigation by the Organization concerned "multiple charges." It is not clear what the General Chairman had in mind making this charge but, in any event, there is nothing in the Rule barring Carrier from charging an employe with several infractions when committed (allegedly) during the course of a day's work.

In its Submission, Petitioner alleges Carrier failed to inform Claimant of the "precise charge" against him. First, it should be noted, this protest should have been made at the outset of the investigation. Second, the allegation is not justified. The charges are quite specific, detailing the nature of the alleged offenses as well as the dates and locations involved. Failure to mention that Claimant's alleged negligence concerned track surface and cross level did not mislead him as to the charges or deprive him of an opportunity to prepare his defense. There is no indication whatsoever that he was "surprised" by the evidence adduced at the hearing.

Petitioner's allegation concerning a fair hearing was not made at the investigation. Such failure may well be considered to constitute a waiver. But, even if we consider this objection on its merits, there does not appear to be valid grounds for sustaining Petitioner's arguments. True, in several cases, including some cited here by Petitioner, the Board has held that due process (i.e., a fair hearing) had been denied a claimant when the same carrier officer functioned as complaining witness, presided at the investigation, and rendered the decision, or when the same person preferred the charges, acted as witness, and rendered the decision. (Awards 4317, 6087, 13443 and

Second Division Award 4536). But Superintendent Ryle was not a witness, nor did he have any first hand information concerning the evidence against Claimant. His signing of the charges was a formality and cannot, of itself, be deemed to have prejudiced him against the employe. In similar situations the Board has rejected allegations of unfairness (Awards 5026, 8179, 9322, 10355, First Division Awards 5301, 16411, 17304, and Second Division Award 1795). A careful reading of Award 8088 indicates that the Board sustained that claim, not so much due to Carrier's officer acting in a triple capacity, as because this officer's conduct at the investigation "made a mockery of all rules of objectivity and fair play." And that was not true in the case at hand.

2. The evidence submitted to buttress Petitioner's allegation that Carrier had a "calculated plan" to punish Crawford is not convincing.

3. There is persuasive evidence that Crawford was guilty of serious negligence on April 17. Three Carrier officials testified concerning specific unsafe conditions along the track Crawford, presumably, had inspected. It was necessary to place slow orders at some of these locations. One of Crawford's prime duties was to place slow orders on track to insure the safety of train passage. The absence of an accident on the days in question cannot excuse his dereliction.

4. While there is room for argument that Carrier's discharge decision constituted excessive punishment for a man with Crawford's long service, the record does show that, only thirteen months prior to this occasion, he had been discharged for another act of negligence: his motor car had been hit by a train. (After about two months he had been reinstated on a "leniency" basis.) Under the circumstances, it cannot be said that Carrier's determination was arbitrary or capricious.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of June 1966.

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