

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22208
Docket Number MW-22251

Nathan Lipson, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation
((Buffalo Creek R. R.)

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

(1) The dismissal of Trackman J. R. Flores for 'insubordination and interference with work of the Maintenance of Way forces' was excessive and wholly disproportionate to the offense with which charged (System Docket BC-1 Buffalo Division Case BCK-P/RD-2390).

(2) Trackman J. R. Flores be reinstated with seniority and all other rights unimpaired and he be compensated for all wage loss suffered."

OPINION OF BOARD: This is a discipline case wherein Claimant was charged with insubordination and interference with the work of Maintenance of Way forces, found guilty and dismissed.

The Organization asserts among other things, that the trial was unfair because the Trainmaster acted in a dual capacity when he filed the charges and notified Claimant of the discipline being administered. We have ruled on this question many times and our conclusion has been that in the absence of contractual proscription, there is no element of unfairness in the same officer making the charge and assessing the discipline.

On the merits, the transcript contains substantial evidence in support of the charge of insubordination. There was no question of safety or risk of injury involved as the Track Foreman, with 48 years of railroad experience, testified the job had been done in this manner numerous times in the past. In the absence of such well known exceptions, the Claimant was obligated to obey and file his grievance in accordance with the Agreement. The trial record also contains ample evidence leading to the conclusion that Claimant willfully and intentionally interfered with the completion of work by other trackmen. The Carrier was not required to condone Claimant's refusal to work or his interference with the work activities of others, and the claim must be denied. In view of our disposition on the merits, we see no reason to discuss the procedural points raised by Carrier.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1978.

