

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22548
Docket Number MW-22534

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(St. Louis-San Francisco Railway Company

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

(1) The dismissal of Track Foreman Larry J. Loman was without just or sufficient cause on the unproven charge that he had violated Rule 176 of the Carrier's Rules for the Maintenance of Way and Structures (System File B-1326).

(2) Claimant Loman shall be reinstated to the position of track foreman, with seniority rights intact and he shall be reimbursed for all earnings lost as a consequence of the discipline imposed upon him."

OPINION OF BOARD: On July 13, 1977, Claimant was notified of an Investigation concerning his guilty plea to second degree burglary and in addition, he was charged with timeroll falsification. Carrier determined that he was guilty of both charges, and he was dismissed. However, in December of 1977 he was restored to work as a laborer - with no Foreman's rights.

We agree that the type of activity involved is the very type which is condemned by Rule 176. Moreover, we are not inclined to accept the Claimant's stated basis for his guilty plea, i.e., it was "cheaper" and he "just wanted to get it over with."

The Claimant makes some rather serious assertions in which he suggests that his Counsel and the Judge permitted and/or encouraged economic expediency to hinder the balance of justice. No corroboration has been offered to substantiate those allegations and we will not accept that this employee pleaded guilty merely because he "...wanted to get it over with..." Even if he did so - he cannot be heard to complain in this forum. Moreover, we are inclined to find a basis for a conclusion that the employee did falsify his timecard.

We do not read the Carrier's position as stating a total prohibition against ever rising to a Foreman's position in the future should it feel that the employee warrants such consideration.

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

That 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 28th day of September 1979.