NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23300
Docket Number MW-23191

George S. Roukis, 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 discipline assessed Assistant Foreman James J. Short was without just and sufficient cause and on the basis of unproven charges (System File B-809).

(2) Claimant James J. Short shall be afforded the remedy prescribed in Rule 91(b) (6)."

OPINION OF BOARD: Claimant, an Assistant Foreman, headquartered at Springfield, Missouri was removed from service by Roadmaster S. K. Kluthe on August 24, 1978 for his asserted failure to make necessary inspections and repairs and for manifesting disrespectful behavior toward his supervisors. He was provided a formal investigation at the behest of the Organization on September 8, 1978 and subsequently informed on September 22, 1978 that he violated seven Carrier rules which related to work place deportment. For ready reference these rules are identified as Rules 175, 176, 177, 251, 281, 284 and 442. He was kept out of service until October 9, 1978.

In defense of his position, Claimant contends that he made all necessary repairs on the Ozark Branch, a branch line, consisting of 17 miles extending a southerly direction from Springfield, Missouri and did not act rudely towards Roadmasters S. K. Kluthe and L. B. Lang when queried about his work. He avers that he permissibly defended himself against false accusations.

Carrier contends that when Claimant was questioned about his August 23, 1978 written report following his inspection of the Ozark Branch, he responded negatively and disrespectfully to his supervisors' questions. The Roadmasters had patrolled the same branch line and compiled a report that was compared to Claimant's. Roadmaster Lang testified that when they reviewed the branch line from National to Kissick, they found numerous ground rails with missing bolts, two broken rails and none of the switches oiled at Galloway. He stated that when Mr. Kluthe compared his report with Claimant's report on August 24, 1978, Claimant responded arrogantly. He characterized Claimant's answers as quick, smart alecky and patently disrespectful.

In our review of this case, we concur with Carrier's position. Careful examination of the record shows that Claimant was surly when questioned about his August 23 report. Roadmasters Kluthe and Lang had conducted a follow up inspection of the Ozark Branch line and uncovered several serious track defects that were not noted in Claimant's report. The supervisors were not estopped from patrolling this line and were impelled by the nature of their findings to discuss these disquieting discrepancies with Claimant. The August 24 meeting was not a vindictive inquisition and Claimant should have responded positively to the problems identified. Instead he was arrogant. We recognize, of course, that at times a follow up review of someone else's work can sometimes lead to legitimate and realistic differences of professional opinion, but a line must be drawn between acceptable dissenting conduct and behavior that is palpably indecorous. From the record, we can only conclude that he was disrespectful and such behavior is intolerable in an industry that is vested with a public interest responsibility. Claimant had been counselled in the past for similar type behavior and it would be injudicious on our part to view his work attitudes lightly. We believe that the penalty imposed was consistent with the fundamental precepts of progressive discipline and commensurate with the seriousness of his infraction. We will deny the claim.

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 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1981.