

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23430
Docket Number MW-23481

A. Robert Lowry, Referee

PARTIES TO DISPUTE: {
(Brotherhood of Maintenance of Way Employees
(Seaboard Coast Line Railroad Company

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

(1) The dismissal of Foreman J. H. Matthews from the service of the Carrier was based on unproven and disproven charges and was arbitrary and capricious (System File C-4(13)-JHM/12-39(79-47) J).

(2) Claimant Matthews' personal record shall be cleared of the charges; he shall be reinstated to his former position with seniority and all other rights unimpaired; he shall be compensated for all earnings loss suffered as a result of his dismissal; and, further, that he be reimbursed for all necessary expenses incurred by him in connection with attending the hearing."

OPINION OF BOARD: The Kaiser Agricultural Chemical Company at Acme, North Carolina owns its tracks and apparently leases a locomotive to perform its switching. At times the Carrier is called upon to perform emergency maintenance work, such as but not limited to, replacing broken rails and rerailing derailed equipment. Mr. J. H. Matthews, the Claimant, was employed as a Section Foreman by the Carrier at Acme. On April 20, 1979, the Carrier was informed by Kaiser that it had received the following bills, all dated April 19, 1979, from Section Foreman Matthews:

- (1) To repair broken rail - No. 3 Track
March, 1979
1 Foreman
5 men
85 lb. rail - \$100.
- (2) To rerail tank car - Enginehouse track
February, 1979
4 hours labor
1 Foreman
4 men labor - \$150.
- (3) To rerail tank car - Hill track
March, 1979
2 hours labor
1 Foreman
1 man - \$50.

The Carrier upon receipt of this information, being unaware of the services performed by Claimant, determined that it was necessary to conduct a formal investigation to develop facts concerning the situation. On May 7, 1979, charges were filed against Claimant and ordered him to attend formal hearing on May 16, 1979.

Claimant was charged as follows:

"Please arrange to attend formal hearing to be held at 1:00 PM on Wednesday, May 16, 1979, in Conference Room of the Lumberton Public Library, 101 N. Chestnut Street, Lumberton, N. C., to determine the facts and place your responsibility, if any, in connection with report received that work was performed for Kaiser Agricultural Chemicals at Acme, N. C., and SCL material used at a time when your payroll indicates that you and your Section Force were under pay by SCL Railroad. Specifically, that Kaiser Agricultural Chemicals at Acme received billing from Jack H. Matthews for the use of labor and/or material used to repair track and rerrail equipment on the dates of February 15, 1979, February 16, 1979 and March 8, 1979.

"You are charged with violation of that portion of Rule G-1 pertaining to 'dishonesty' and 'making false statements' and Rule 709 of the SCL Railroad Company's Operating Rules effective December 4, 1978, and with that portion of Rule 18 pertaining to 'dishonesty' and 'making false statements' of the SCL Safety Rules for Engineering and Maintenance of Way Employees effective September 1, 1967."

The investigation was held as scheduled. Copy of the transcript of the investigation was made a part of the record. Claimant was represented by the Vice Chairman of his Union and they were accorded the right to produce witnesses, which they did, and to examine and cross examine witnesses which was done extensively. A careful reading of the transcript reveals Claimant was given a fair and impartial hearing as required by the rules of the Agreement between the parties.

It was a long and tedious journey through a confusing transcript but it is clearly evident Carrier proved it's case. The work in question was performed by Claimant and his crew when they were under pay by the Carrier. Claimant attempted to defend himself by claiming the work involved was performed on days other than those claimed by Carrier when he was not on Carrier's payroll. His own two witnesses, Robinson and Rhodes, members of his section gang, did not support this position and it was further disproved by Witness Johnson of the Kaiser Company. Claimant and his two witnesses, Robinson and Rhodes, also testified that Trainmaster Hall was present during the period some of this work was being performed and that Hall has given Claimant instructions to how to file his claim for this work with Kaiser and that he was merely following the Trainmaster's instructions. This testimony proved to be false when the two witnesses,

Robinson and Rhodes, later volunteered statements that such evidence on their part was false. Both received thirty days suspension without pay for giving false statements at the investigation. It was proven Trainmaster Hall was not present during the period in question, nor had he given Claimant any such instructions as claimed.

The record clearly shows Claimant making improper monetary claims upon the Kaiser Company for work that he and his crew had already been fully compensated for by the Carrier. Clearly violating Carrier's Rules cited in the Charges and for these reasons the discipline imposed by Carrier should not be disturbed.

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.

ATTEST:

A. W. Paulsen

Executive Secretary

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 3rd day of November 1981.