

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24278
Docket Number MW-24173

John B. LaRocco, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
 { Bangor and Aroostook Railroad Company

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

(1) The dismissal of Sub-Foreman Charles H. Boss, Jr. for alleged 'Failure to perform your duties as Sub-Foreman in a responsible manner' and for alleged violation of Rules '110', '275', 'A', '284', '290' and '448' was without just and sufficient cause, unwarranted, on the basis of unproven charges and in violation of the Agreement (Carrier's File 149.4.3).

(2) Sub-Foreman Charles H. Boss, Jr. shall now be allowed the benefits prescribed in Section 1(c) of Article IV.

OPINION OF BOARD: Claimant, a Sub-Foreman on the tie gang, was dismissed from service following an investigation held on August 14 and 14, 1980. The Carrier had charged Claimant with a number of different offenses. Though the Organization contended the notice of charges was imprecise, we find that the notice dated August 7, 1980 apprised Claimant and his representative with sufficient details concerning the alleged infractions.

At the investigation, several trackmen on the tie gang related that on August 5, 1980, Claimant drove a motor car (at high speed) toward them without warning while they were working inside the track. They stepped out of the way just before the motor car passed. The Assistant Superintendent of Track and a Machine Operator testified that Claimant improperly dumped untreated sewage from the outfit's living cars into a ditch along the right of way on June 30, 1980. The Carrier also presented evidence indicating Claimant was partially responsible for damage to a personnel trailer which collided with a train. An examination of the trailer after the accident disclosed that the trailer had not been properly secured and that Claimant had not placed a derail on the track. Other testimony at the investigation related to Claimant's harrassment of a deputy sheriff, his failure to timely file a personal injury report, and his alleged hostile relationship with some of the members of the tie gang.

When the Carrier decided upon the measure of discipline to impose on Claimant, the Carrier not only reviewed Claimant's prior record but also relied on a June 8, 1972 Letter of Understanding between the Carrier and Claimant. In essence, the 1972 Letter (which had resolved a prior disciplinary matter) stated that Claimant could be discharged if he committed any subsequent rule infraction.

Characterizing the Carrier's evidence as gossip, unsubstantiated gripes, and personality conflicts, the Organization contends that there is no credible evidence in the record showing Claimant engaged in any misconduct. In addition, the Organization challenges the Carrier's reliance on the 1972 Letter of

Understanding to justify Claimant's dismissal. According to the Organization, the Carrier's failure to raise the terms of the 1972 letter for eight years was an unreasonable delay which prejudiced Claimant. Citing the doctrine of laches, the Organization argues that the Carrier is barred from using the 1972 letter against Claimant. The Carrier, on the other hand, submits that there is overwhelming evidence demonstrating that Claimant performed his work in an inadequate and irresponsible fashion. When Claimant's poor prior discipline record is taken into account in conjunction with the 1972 letter, the Carrier contends that dismissal was the appropriate measure of discipline.

After carefully reviewing the lengthy record in this case, we conclude that the Carrier presented substantial evidence proving that Claimant committed not just one infraction but several offenses during the summer of 1980.

On August 5, 1980, Claimant recklessly operated a motor car which could have resulted in serious injury to the trackmen. Perhaps Claimant was merely trying to scare his gang. However, his actions were dangerous and went far beyond the usual interaction found in track gangs. Furthermore, Claimant improperly disposed of untreated sewage, caused damage to a personnel trailer by not observing safety precautions and harassed a peace officer. Claimant has demonstrated, by his own conduct, that he is unable to responsibly carry out his duties.

Given Claimant's poor prior record, we do not find any justification for reducing the assessed discipline. This Board does not need to address the parties arguments regarding the effect of the 1972 Letter of Understanding. Standing alone, the severity of Claimant's offenses as well as his poor past record constitute an independent basis for upholding the dismissal.

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 Employee involved in this dispute are respectively Carrier and Employee 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

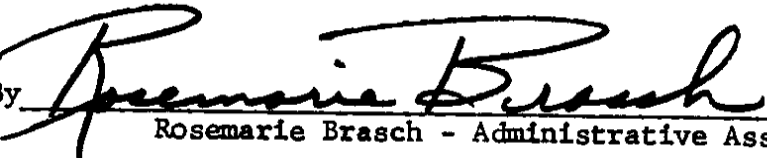
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 31st day of March 1983.