

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25068
Docket Number MW-24961

I. M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation (former Penn Central
(Transportation Company)

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

(1) The disciplinary disqualification of Mr. F. Black as I&R Track Foreman for alleged 'Violation of Section 213.7, Paragraph (a), Items (2) (i) (ii) (iii) of the MW-4 Manual for Construction and Maintenance of Track', alleged 'Failure to provide required information on I&R Inspection Reports' and alleged 'Violation of Section 213.235, Paragraphs (a) and (b), of the MW-4 Manual for Construction and Maintenance of Track' was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System Docket 617).

(2) The claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant herein received a Notice of Investigation, dated August 18, 1980, with the following charges:

- "1. Violation of Section 213.7, Paragraph (a), Items (2) (i) (ii) (iii) of the MW-4 Manual for Construction and Maintenance of Track which reads, '(2) Each person designated must have demonstrated to the railroad that he: (i) knows and understands the requirements of this part; (ii) Can detect deviations from those requirements; and (iii) Can prescribe appropriate remedial action to correct or safely compensate for those deviations.'
2. Failure to provide required information on I&R Inspection Reports.
3. Violation of Section 213.235, Paragraphs (a) and (b), of the MW-4 Manual for Construction and Maintenance of Track which reads,
(a) Each switch and track crossing must be inspected on foot at least monthly, except as provided in paragraph (b) of this section.
(b) In the case of track that is used less than once a month, each switch and track crossing must be inspected on foot before it is used.'

These violations are in connection with defects found and violations filed by June 10, 1980; June 11, 1980; and June 12, 1980, by FRA Inspector over tracks that you recently inspected."

Following the investigative hearing, Claimant was notified that he was found guilty and was disqualified as an I & R Track Foreman by notice dated September 29, 1980.

As an initial position Petitioner alleges that the charges were vague and prevented Claimant from mounting a proper defense. Carrier denies this allegation. An examination of the record of the investigation as well as the charges, supra, supports Petitioner's position. The charges were indeed vague and totally inadequate on a prima facie basis; nevertheless, Carrier did raise at the investigation specific violations related to each of the three charges. Serious accusations, such as those herein, must contain specific information with regard to the time, date and nature of the alleged infractions. Such information was lacking and makes the task of defending (much less the reviewing authority) virtually impossible. Thus, this Board cannot reach either the merits of the dispute or the other arguments presented: the claim must be sustained.

Following his disqualification Claimant secured his position with Carrier which resulted in no reduction in earnings. In addition, the record indicates that Claimant subsequently retired. While it is clear that this entire matter is moot, the only remedy is to remove the disqualification from Claimant's record.

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;

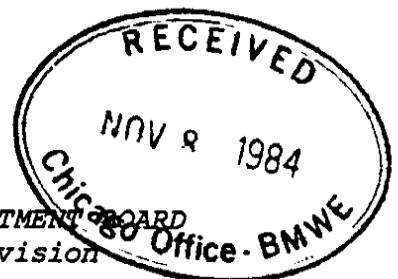
That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

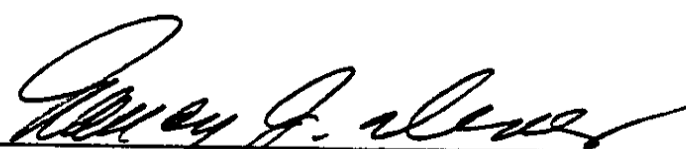
A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division



ATTEST:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 4th day of October 1984.