

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25127
Docket Number MW-25017

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Norfolk and Western Railway Company
(Former Illinois Terminal Railroad Company)

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

(1) The disciplinary demotion of Track Foreman C. Walker "for allegedly failing to supervise the Roxana Section sufficiently to produce quantity and quality of work when you repaired a broken rail, on the A&E Pass Wood River, by installing a pair of angle bars on October 6, 1981" was arbitrary, without just and proper cause and on the basis of unproven charges [System File ITRR (N&W) 1981-17/MW-STL-82-1].

(2) Mr. C. Walker's seniority as track foreman be restored and unimpaired and he shall be allowed the difference between what he would have received at the track foreman's rate and what he was paid as a large machine operator from November 2, 1981 until he is returned to work as a track foreman with seniority as such unimpaired.

OPINION OF BOARD: By certified mail dated October 13, 1981 the Claimant, C. Walker, was advised to report for a formal investigation on October 20, 1981 to develop facts and determine responsibility, if any, with respect to his alleged violation of Rule 14 of the Illinois Terminal Railroad Company's General Regulations and Safety Rules. The Claimant was specifically charged with allegedly failing to supervise the Carrier's Roxana Section in order that work of sufficient quantity and quality be produced when a broken rail was repaired at the A&E Pass at Wood River on October 6, 1981. After the hearing was held as scheduled the Claimant received notice dated October 30, 1981 by which he was informed that he had been found guilty as charged. Discipline assessed was demotion to Large Machine Operator effective November 2, 1981. After appeal on property up to and including the highest Carrier officer designated to hear such, this case is now before the Third Division of the National Railroad Adjustment Board.

A review of the record shows that a broken rail was discovered at about 7:45 a.m. on the A&E Pass on October 6, 1981. The Claimant was instructed by the Roadmaster who discovered the broken rail to supervise its repair. According to the testimony of the Roadmaster it should not have taken more than an hour to put on a "pair of 80 pound angle bars on a straight rail break" such as the one in question. At the same time that the Claimant was instructed to repair the rail he was also instructed to repair a low spot in the track south of Rand Avenue, Hartford after the A&E Pass rail had been fixed. By 11:00 a.m. of the same day, however, the Claimant had not yet begun this second assignment. The instant case centers on the quantity and quality of work performed under the supervision of the Claimant during these three (3) hours and fifteen (15) minutes from 7:45 a.m. until 11:00 a.m. on October 6, 1981.

The record establishes that the Claimant testified that he had finished the broken rail repair by "about 9:30 a.m." which included drilling holes in the angle bars and time consumed "looking for angle bars". The time consumed doing this job was clearly above the norm of about one hour needed to make such a repair. The balance of the time until 11:00 a.m. was spent unloading ties from his truck. These ties had been on the truck for "about three days" and were unloaded because the "truck wouldn't hardly hold them" since it only had "two gears". It is not clear from the record why the Claimant had the ties unloaded at Roxana, rather than at some other location, because he also testified that he did not "remember where (the ties) were supposed to go". It is also unclear why the ties were left on the truck for three (3) days if the truck was really in the state of disrepair that the Claimant claimed. The record does establish, however, that one of the reasons (although certainly not the only one) why the Claimant's work gang may not have started the second assignment of the day earlier than it did was because clearance was not immediately granted by the dispatcher to work on that track.

On balance, however, the record shows a pattern of disorganization in the work habits of the Claimant on the day in question and it establishes, in terms of a fair test of the criterion of substantial evidence, that this disorganization led to a waste of work time. On merits, this case cannot be sustained. With respect to the quantum of discipline there is also some testimony in the record, all from the Roadmaster who had assigned work to the Claimant on October 6, 1981 that he had been dissatisfied with the Claimant's performance of his gang foreman's duties in the past, and that he had spoken to the Claimant to that effect. This evidence is not supported by any other in the record, however, that other Carrier supervisors had ever been dissatisfied with the Claimant's performance. In view of the total record before the Board, therefore, it would not be unreasonable to give the Claimant an additional chance to prove his worth to the Carrier as a track foreman although he was clearly remiss in the performance of his duties on October 6, 1981 in an "alert and attentive" manner as required by Rule 14. As of the Order date of this Award the Claimant shall be granted his full rights, under the current Agreement, to bid on any track foreman's position bulletined thereafter by the Carrier. His seniority rights remain unimpaired. All other claims in the Statement of Claim are denied.

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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 9th day of November 1984.