

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25680
Docket Number SG-25842

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corporation:

(a) Carrier violated current Signalmen's Agreement when it assessed unusual, harsh and excessive punishment to Mr. A. Troncone, by holding claimant out of service from April 23, 1983, until June 6, 1983 and disqualifying him from the Foreman and Assistant Foreman seniority class.

(b) The Carrier should now be required to return Mr. Troncone to the position of Foreman, and compensate him for all wages lost as result of the Carrier's action and remove the incident from his record. [Carrier file NEC-BRS-SD-171D]

OPINION OF BOARD: In this dispute, Claimant was removed from service on April 23, 1983 in connection with an incident that occurred in the early morning hours of that date. An investigation was subsequently held on May 5, 1983 to determine whether he violated Rules F, I and K of the Amtrak General Rules of Conduct and based upon the investigative record he was apprised by letter dated May 24, 1983 that he was permanently disqualified as Foreman and Assistant Foreman and suspended for the time he was held out of service.

In response to this action, Claimant requested an appeals hearing in accordance with the requirements set forth in Article 7, Section 1 of the Signalmen's Controlling Agreement and said hearing was held on July 25, 1983. The Assistant Regional Engineer who conducted this proceeding later apprised the Signalmen's General Chairman and Claimant by letter, dated August 3, 1983, that he was willing to review the permanent disqualification penalty following a six (6) months assessment period of Claimant's performance. On September 21, 1983 Claimant reported that he was injured while on duty and he began a leave of absence that extended to June 25, 1984. In the interim, the claim was progressed, although Claimant was notified by letter, dated March 23, 1984 that he would be permitted to requalify and exercise his Foreman class seniority when he was medically able to return to work. He returned on June 25, 1984 and exercised his seniority to a Maintainer, C&S position.

In defense of his petition, Claimant contends that Carrier failed to establish beyond a reasonable doubt that he was guilty of the asserted misconduct charges. He asserts that he was unsure of the Supervisor's request on April 23, 1983 and uncertain as to the location of the temporary air hose. He disputes the allegations that he was careless and negligent of the Supervisor's safety and disclaims the charge that he encouraged his men to walk off the job.

Carrier argues that a careful analysis of Claimant's location on April 23, 1983 pointedly indicates there was no reason for Claimant and his work gang to leave the job site to pick up a tie strap. It asserts that after being located and summoned to return to the work site, Claimant refused to implement a direct supervisory order to have an air line turned off and compounded his insubordination by walking off the job. It contends that the record unmistakably shows that he was guilty of the cited rule violations and maintains that the discipline assessed was proper and consistent with normative disciplinary standards.

In our review of this case, we agree with Carrier's position. After carefully assessing the situational dynamics of the April 23, 1983 incident, and based upon the testimonial versions given by the witnesses, we find that Claimant was guilty of the cited rule violations. We find no plausible reason that would reasonably extenuate his absence from the Hudson Interlocking work location or any justification that would explain his refusal to comply with a clearly stated direct supervisory order. He was again remiss when he implicitly encouraged his men to walk away from the job site and this latter action added to his insubordinate misconduct. Claimant has argued that Carrier failed to prove beyond a reasonable doubt that he was guilty of the asserted charges, but reasonable doubt is not the proof standard in arbitral proceedings. Carrier's actions need only be supported by substantial evidence of probative value, which was established herein. We note for the record that Claimant's disqualification was lifted and, in fact, he actually worked in a reduced class for four (4) months. His time out of service from April 23, 1983 until June 6, 1983 was not improper, nor an abuse of managerial discretion under these circumstances.

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;

Award Number 25680
Docket Number SG-25842

Page 3

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:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1985.