

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25923

Docket Number MW-26003

Charlotte Gold, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Northeast Illinois Railroad Corporation

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

(1) The ninety (90) days of suspension imposed upon Mr. S. C. Sorn for alleged 'failure to have track in compliance with company standards at the completion of assignment July 20, 1983' 'in alleged violation of Rules "B", "D", "N", 146 and 148 of Rules & Regulations for Maintenance of Way & Structures, Form PE-01-RC (NIRCRC Employee Conduct Rules)' was arbitrary, capricious and on the basis of unproven charges (System File (NIRCRC-D-1107)).

(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: On July 20, 1983, Claimant was assigned as a Tie Gang Foreman in Chicago, Illinois, but was called upon to operate a Spike Driver. When the work was completed that day, the Department Manager determined that some ties were missing and others not properly installed. Carrier assessed a 90-day suspension for his "failure to have track in compliance with Company standards at completion of assignment on July 20." Before this Board, Carrier contends that (1) Claimant, and not the Project Engineer, was in charge of the Tie Gang that day. He was never relieved of his responsibilities and was paid at the Foreman's rate. (2) As the operator of the Spike Driver, he was the last man over the track and thus was in a position to note irregularities. (3) Even if Claimant was not the Foreman, Company Rules require all employees to report unsafe conditions.

The Organization alleges that Claimant was not in charge of the Tie Gang that day and he was not responsible for the work performance. At the same time, the work completed met minimum standards for scheduled speed and the track was not unsafe. Even if Claimant was responsible, the penalty imposed was excessive.

Claimant offered to operate the Spike Driver on the day in question and it was agreed that he would do the work. It is Carrier's contention that by doing so, he did not relinquish his responsibilities as Foreman. We do not agree. It was unrealistic of the Department Manager-Engineering to assume that Claimant could work as a Machine Operator and at the same time supervise others in their activities. A Project Engineer, who was a Company Official

and senior to Claimant in authority, was present on the site. It was logical to assume that he would be responsible for overall supervision, since, unlike everyone else, he was not engaged in working on ties. Based on the Department Manager's testimony as to what he told the Claimant and the Project Engineer, we must conclude that he did not issue clear directions to the two men on the matter of supervision.

Upon a review of the entire record, we find that there was insufficient evidence of a probative nature adduced at the Investigation to support the Investigating Officer's decision concerning Claimant's guilt.

Thus, for all the reasons stated above, we sustain the Claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearings;

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

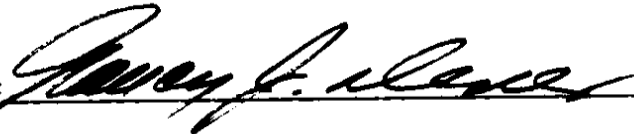
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1986.

