NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26030
THIRD DIVISION Docket Number MW-26005

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(National Railroad Passenger Corporation (Amtrak)
((Northeast Corridor)

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

(1) The disciplinary demotion of Track Foreman T. R. Salzman and his permanent disqualification as track foreman and assistant track foreman for alleged misconduct on February 23, 1983 was unwarranted and without just and sufficient cause (System File NEC-BMWE-SD-601D).

(2) Mr. T. R. Salzman's seniority as track foreman and assistant track foreman be restored and unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: On March 3, 1983, Claimant was notified to attend a trial to investigate two charges brought against him. Claimant was charged first with failing to exercise proper judgment wherein he performed no work for three hours and secondly with claiming and receiving compensation for time not worked. Following the trial, Claimant was found guilty as charged and assessed discipline of permanent disqualification as Track Foreman and Assistant Track Foreman.

A complete review of the record as handled on property indicates that the Claimant's gang performed no work from approximately 8:00 A.M. until 12:30 P.M. on February 23, 1983. Claimant admits for the record that he gave no work orders that morning due to fog and that the gang also went for an extended lunch from around 11:30 A. M. to 12:30 P.M. Nevertheless, Claimant submitted a time request for pay showing a full eight hours of work for himself and his gang that day.

The Claimant maintains that the weather conditions precluded working in a safe manner that morning. Claimant further argues that the extended lunch was reported and made up by extra work on the following day. While Claimant admits that time claims were made for time not worked, he insists that there was absolutely no attempt to defraud the Carrier. In support of the Claimant the Organization argues that the charges were simply not supported by the evidence presented at the trial.

The Carrier disputes the weather conditions and further argues that "there was no acceptable reason justifying [Claimant's] failure to perform [his] assigned duties...". Carrier states for the record in its letter of October 27, 1983, that even if the Claimant and gang worked through their lunch hours the next day it would not "...mitigate his action of submitting time for time knowingly not worked on the day in question". It is the position of the Carrier that the Claimant is guilty of the charges.

This Board has reviewed the trial transcript as well as the on property correspondence. Although there are conflicting perceptions wherein the crew supports the Claimant's view of the weather related safety hazards and the Assistant Division Engineer and Track Foreman disagree, on the whole of the evidence this Board finds the Carrier's position substantiated. The accepted norm in discipline cases is that there be substantial evidence defined as "such relevant evidence as a reasonable mind might accept as adequate to support a 'conclusion'" (Consol. Ed. vs. Labor Bd. 305 U.S. 197, 229). With regard to the evidence in the instant case, a review of the record indicates that the requirements of the norm have clearly been met.

As Supervisor, the Claimant had a responsibility to exercise proper judgment and instruct his gang to perform work. Claimant admits he did not request fouling time or have his crew do alternate work. Although later recanting, Claimant further admits that on February 23, 1983, he told the Track Foreman that he failed to exercise proper judgment. The record also firmly supports the fact that the Claimant took an extended lunch and claimed eight hours to Payroll for himself and his crew. There is adequate evidence in the record to substantiate Claimant's guilt.

The only thing left for this Board to decide is whether the discipline assessed is commensurate with the nature of the offense. Under the circumstances and facts of the case at bar, this Board finds that permanent disqualification as Track Foreman and Assistant Track Foreman is excessive discipline. There is nothing in the record with regard to past discipline to suggest that Claimant's guilt in the instant circumstances should lead to permanent disqualification. As such, Claimant should be given one last chance to document his worth to the Carrier. This Board rules that Claimant's rights to Track Foreman and Assistant Track Foreman positions shall be restored. Claimant shall receive no compensation for that period in which he was properly disqualified in these circumstances of guilt.

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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

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 28th day of May 1986.