

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Burlington Northern Railroad Company (former
(St. Louis-San Francisco Railway Company)

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

(1) The discipline imposed upon Welder D. L. Zarbo for alleged 'failure to comply with instructions, being quarrelsome and for his alleged use of profane language' on April 25 and 26, 1984 was arbitrary, capricious and on the basis on unproven charges (System File B-2234/GMWA 84-9-25).

(2) The claimant shall be afforded the benefits provided within Rule 91(b)(6)."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant, while assigned as a Welder to Gang 409 at Undenwood Yard, St. Louis, Missouri, was withheld from service on April 26, 1984, by an Assistant Roadmaster.

On May 2, 1984, Claimant was notified to attend an Investigation on May 9, 1984, to determine "your responsibility in connection with your alleged failure to comply with instructions; being quarrelsome and for your alleged use of profane language."

The Organization argues that Claimant was denied a fair and impartial Investigation as required by Rule 91 of the applicable Agreement. It asserts that the charges against Claimant were not sufficiently precise. Carrier denies this assertion.

The Organization further alleged that the Hearing was conducted improperly because Carrier called only the Assistant Roadmaster and did not corroborate that testimony. Carrier disputes this allegation, too.

Both procedural arguments are without merit. First, the notice was sufficient to adequately apprise Claimant of the charges against him so that he might adequately be able to defend himself. The charge contains the necessary date, time and place. Moreover, no objection was raised at the Hearing that the notice was inadequate.

Second, it is well settled that the Investigating Officer makes determinations of credibility (See Third Division Awards 9339, 10113, 20194). Apparently, the Officer found the witness credible.

As to the merits, the record evidence clearly proves that Claimant was guilty as charged. He failed to follow the instructions of his Supervisor. Claimant himself testified in the transcript that he was aware of the clear instructions given to him; yet chose not to comply with them.

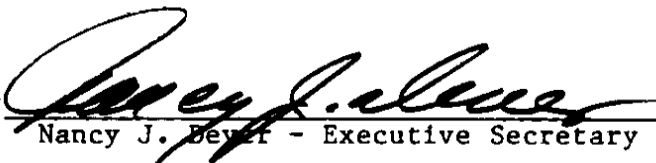
What shall be the appropriate penalty? While we agree that Claimant is guilty, the Board believes that the discipline was excessive. Instead, we shall reduce the discipline to a 5 day suspension. His personnel record shall be revised and he shall be compensated in accordance with Rule 91(b)(6).

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of May 1989.