

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 27903  
Docket No. MW-27372  
89-3-86-3-602

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(Duluth, Missabe and Iron Range Railway Company

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

(1) The discipline imposed upon Messrs. D. J. Michael [fifteen (15) work days of suspension and disqualification as a Mechanic-In-Charge], L. S. Forstrom [five (5) work days of suspension] and B. A. John [ten (10) work days of suspension] for alleged failure to properly perform their duties as B&B employes at the Duluth Docks on September 13, 1985 was unjust, arbitrary and on the basis of unproven charges.

(2) Claimant Michael shall be restored to the position of Mechanic-In-Charge with seniority and all other rights unimpaired and the three claimants' respective records shall be cleared of the charges leveled against them and they shall be compensated for all wage loss, if any, suffered."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

On September 13, 1985, a three-man crew was assigned to install corrugated panels over a conveyor. The day began with a safety meeting and by 8:15 A.M., the crew had its assignment for the day.

Mr. Michael, the Mechanic-In-Charge, (MIC), left to attend a breakfast meeting with the Supervisor, other MICs, and the foreman. He instructed the two mechanics on his crew to gather the necessary equipment and prepare the worksite since they could not begin installing the panel until Mr. Michael returned, as the job required three people.

When Mr. Michael returned from his breakfast meeting at 10:20 A.M., the two mechanics were just getting ready to clean up the worksite in preparation of installing the panels. The three Claimants completed cleaning the

area at 11:15 A.M. When they began to install the panels, they discovered that the screwshooter, an electrical device that drills holes and inserts screws in a single operation, was not working properly.

Mr. Michael made two attempts at repairing the screwshooter. The Claimants were able to install partially only one panel before eventually taking the faulty tool to the electricians for repair at 2:15 P.M. Meanwhile, they cleaned up the workshop and stored some bolts in the tool cage.

Shortly after 3 P.M., the Claimants were called into the Supervisor's Office and questioned about their lack of progress in installing the overhead panels on the conveyor. Subsequently, all three were charged with failure to perform their duties. Following an investigation, Mr. Michael was disqualified as an MIC and suspended for 15 days, Mr. John was suspended for 10 days, and Mr. Forstrom was suspended for 5 days.

The Organization maintains that the discipline was unjust, arbitrary, and based on unproved charges. The Claimants were hampered in their efforts by a faulty tool, the Organization states, but they performed productive work all day. The Carrier has failed to demonstrate that the Claimants could have completed their assignment under the circumstances.

The Organization also argues that Mr. Michael has been subjected to dual discipline (demotion and suspension) for the same alleged offense, and the disparate suspensions imposed are arbitrary.

The Carrier contends that the Claimants should have been able to install a minimum of six to eight panels that day. When they first discovered that the screwshooter was not working properly, they should have taken it to the electrician immediately or reported the problem to supervision. Alternatively, there were other projects they could have worked on that were more productive than cleaning the workshop and storing bolts, the Carrier emphasizes.

As MIC, Mr. Michael bears a greater responsibility for the crew's lack of productivity, the Carrier insists, and he previously has been disciplined. Mr. John also has a prior disciplinary record. Mr. Forstrom was assessed the least severe penalty because his prior record has no incidents of this type.

In the handling on the property, the Organization argued that this crew had been "set up" by the Supervisor, who was on some type of "witch hunt." Letters read into the record at the investigation alleged that the Supervisor had intentionally given Mr. Michael an assignment he felt the MIC could not handle. The Organization did not pursue this issue in its Submission before this Division, however, and certainly did not prove the allegation. Therefore, we have given it no weight in our decision.

Mr. John appealed his discipline solely on the grounds that he had not received a copy of the transcript of the investigation within 20 days. It was not until the Submission to this Division that the merits of the discipline were raised in Mr. John's case. The Carrier contends that Rule 10(c), cited by the Organization, imposes a 20-day limit only on the rendering of any

discipline following an investigation; the Rule does not impose a time limit on furnishing a transcript. In any case, the Carrier observes, the Claimant received a copy of the transcript on the 20th day after the hearing.

We concur with the Carrier's arguments on the above issues regarding Mr. John's appeal. Rule 10(c) does not specifically require that a transcript be furnished within 20 days of the hearing. Moreover, the investigation was conducted on October 9, 1985, and the postal receipt for the transcript was signed for on October 29, 1985. Therefore, even if it can be argued that Rule 10(c) infers a 20-day time limit, that limit was not exceeded. Since an alleged violation of Rule 10(c) was the sole basis for Mr. John's appeal on the property, we deny his Claim.

We note for the record that we specifically disagree with the Carrier's contention that Mr. John has no standing to appeal this discipline since he no longer is an employee (a claim the Carrier never raised on the property). Subsequent to this incident, Mr. John was dismissed for an unrelated matter, and that dismissal has not been challenged. However, his employment status at the time this case was brought before the Board has no bearing on his rights under the Railway Labor Act to challenge disciplinary action taken against him when he clearly was an employee.

On the merits of the charges against Mr. Michael and Mr. Forstrom, we are satisfied that the Carrier has established that the Claimants were derelict in the performance of their duties that day. During the two hours prior to Mr. Michael's return from the breakfast meeting, the two mechanics gathered the tools and equipment needed for the job and connected extension cords to the power source. These activities could not have consumed two hours if the Claimants had been at all diligent. Mr. Michael admitted that he had never before repaired a screwshooter or even taken one apart, yet he did not seek help from anyone qualified to fix the faulty tool. Instead, he attempted the repairs himself, which resulted in the loss of a day's work. It should be noted that when the screwshooter eventually was brought to the electrician, he repaired it in 15 minutes.

The mechanics did not seek other useful work to do while the MIC was attempting to repair the screwshooter. Both men acknowledged their duty to find productive activities under these circumstances, and Mr. Michael acknowledged his responsibility as MIC to insure that his crew was productively employed.

We concur with the Carrier that cleaning the workshop and storing bolts does not satisfy that obligation. The Carrier has persuasively demonstrated that there were a number of other tasks of far greater priority that could have and should have been done. The Claimants all had sufficient experience in this job classification to expect better judgment on their part.

According to the Carrier, based on other crew's experience it should have taken roughly 30 minutes to install a single panel over the conveyor. The Claimants partially installed only one panel between 8:15 A.M. and 3:00 P.M. Their only explanation for their lack of productivity was the faulty screwshooter, which could have been fixed in 15 minutes. We must conclude that the Claimants failed to perform their duties, as charged.

The Organization has suggested that the Carrier shares the blame, if any, for poor productivity since the Supervisor waited until the end of the shift to question the lack of progress on the assignment. We are not persuaded that the Carrier's failure to supervise more closely the work absolves the Claimants in any measure.

As Mechanic-In-Charge, Mr. Michael must bear a greater degree of blame for the crew's lack of productivity. It is appropriate that he be disqualified as an MIC, since his actions demonstrate a lack of ability to handle the added responsibility of that position. It also is appropriate that he be suspended as a penalty for his own lack of productivity that day. We do not view this discipline as an impermissible dual penalty.

However, the Carrier has failed to justify the imposition of a lengthier suspension on Mr. Michael. While we understand and agree with the briefer suspension for Mr. Forstrom due to a better prior disciplinary record, the Carrier has offered no justification for the disparity in length of suspension between Mr. Michael and Mr. John. Both had prior bad marks, and the Carrier has not distinguished between their prior records. Therefore, we will reduce Mr. Michael's suspension to ten (10) work days.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

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