

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Inc. (former A&WP-WofA-AJT-
(Georgia Railroads)

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

(1) The discipline imposed upon Maintenance of Way employe R. P. Silcox, Jr., disqualification as track foreman, assistant foreman and apprentice foreman pending the outcome of the disciplinary hearing and the subsequent ten (10) days' actual suspension from service to begin upon his return to full active duty, for alleged violation of CSX Transportation Operating Rule 501, on November 21, 1989, was on the basis of unproven charges, without just and sufficient cause and in violation of the Agreement [System File 90-6/12(90-51) AWP].

(2) The Claimant shall have the discipline imposed upon him rescinded and the charges leveled against him and all material related to same shall be cleared from his record and he shall be compensated for all wage loss suffered as a consequence of the above-referenced violation."

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.

At the time of the incident at issue, Claimant was assigned as a Foreman on AFE Gang 6M04, and was working in the vicinity of Newnan, Georgia. On the morning of November 21, 1989, Claimant was assisting in the maintenance operations at the north end of Palmetto Siding, Railroad Milepost XXA-23.5, in Palmetto, Georgia.

On November 28, 1989, the Assistant Division Engineer issued Claimant a Notice of Investigation/Letter of Charge instructing him to attend investigation at LaGrange, Georgia. That letter read in pertinent part as follows:

"You are charged with possible violation of CSX Transportation Operating Rule 501. That portion which states: 'Employees must not be disloyal, dishonest, insubordinate, immoral, quarrelsome, vicious, careless or incompetent. They must not willfully neglect their duty, endanger life or property or make false statements or conceal facts concerning matters under investigation.' These charges originated while performing maintenance duties at the north end of Palmetto Siding, Railroad Milepost XXA 23.5, on November 21, 1989. In order to assist the maintenance operations at the north end of Palmetto, you were instructed by myself to bring an air compressor from Newnan, Georgia, to the work site at Palmetto, Georgia. Upon my arrival at the Palmetto, Georgia work location it was discovered that you had not brought the air compressor from Newnan, Georgia as previously instructed. The lack of utilization with the air compressor resulted in unnecessary delay to the maintenance work in progress."

A Hearing was held on December 19, 1989. On January 6, 1990, Carrier notified Claimant that as a result of the Investigation he was being issued a ten day actual suspension, to begin on his return to full active duty. At the time of the notice of discipline, Claimant was out of service for medical reasons.

The Organization appealed Carrier's discipline by letter of January 12, 1990. In that letter, the Organization maintained that the Claimant was neither insubordinate nor incompetent by his actions, and that Carrier had not met its burden of persuasion. Further, the Organization re-emphasized objections made at the Hearing that Claimant was improperly disqualified and held out of service pending the Investigation, and thus deprived of an opportunity to use his Rank 1, 2 and 3 seniority in his department during the time he was held out of service. The result was in direct violation of Rule 39 of the Agreement between the Parties. Rule 39 reads in pertinent part:

"RULE 39

DISCIPLINE AND GRIEVANCES

Section 1

An employee who has been in the service sixty

(60) calendar days or more will not be disciplined or dismissed without a proper hearing as provided for in Section 2 of this Rule. He may, however, be held out of service pending such hearing."

Carrier denied the Organization's Claim on March 8, 1990, and the Claim was subsequently processed up to and including the highest Carrier officer authorized to handle such matters. In addition, the matter was discussed in conference on April 2, 1990, following which the issue remained unresolved. Accordingly, it is properly before the Board for adjudication.


A careful review of the record before the Board reveals that Claimant admitted at the Investigatory Hearing that on the day in question he had "overlooked" the necessity of taking the compressor with him when he assembled his gang in the truck and left for Palmetto. In light of that admission, and the persuasive testimony by Carrier officers that Claimant was given clear instructions regarding his responsibilities in that regard, there is no question concerning Claimant's culpability in this case. The only remaining issue is whether, under the circumstances, Claimant should have been disqualified and held out of service pending the Investigation. Carrier points out that Claimant was not withheld from all service, but was prevented only from exercising supervisory responsibilities over other workers pending investigation of the charges against him. In light of the nature of the violation with which Claimant was charged, this Board does not find Carrier's decision to disqualify him from exercising supervisory responsibilities pending the outcome of the Hearing to be an unreasonable action. Although, on its face, the discipline assessed may appear harsh, the record before us indicates that Claimant had previously been warned by Carrier that he was considered less than conscientious in execution of his duties as Foreman. Accordingly, the Board finds no basis on the record before us for disturbing the discipline assessed by Carrier in this instance.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deven - Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1992.