

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
(Terminal Railroad Association of St. Louis

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

(1) The discipline imposed upon Mr. C. L. Jefferson for alleged violation of T.R.R.A. General Notice, Paragraphs 2, 3, 4 and 5; General Rules B, F, M and N was harsh, improper, on the basis of unproven charges and in violation of the Agreement (System File 1990-2 TRRA/013-30).

(2) The Claimant shall be restored to his former position as track foreman with seniority and all other rights unimpaired, he shall have his record cleared of the charges leveled against him and he shall be compensated for all wage loss beginning December 12, 1989 and continuing, including the difference between that which he earns during his demotion and that which he would have earned as a track foreman, until he is restored as a track foreman."

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.

Claimant was employed as a track Foreman, a position he had held for approximately eleven years. On December 8, 1989, he was working under the supervision of a Track Supervisor, who instructed him to install a longer rail at an open rail joint on the Illinois Transfer track. He was also instructed to install rail anchors at the location to hold the rail in place. Claimant and his gang members worked at the site until normal quitting time (at the end of their shift) at which hour not all the necessary anchors had been installed. Claimant next reported for work as scheduled on Monday, December 11, 1989.

By letter of December 12, 1989, the Claimant was notified as follows:

"Between July 18, 1989 and September 18, 1989, you were Track Foreman in charge of laying continuous welded rail (CWR) including rail anchoring on the single track Illinois Transfer route between Valley Junction interlock and Southern Interlock. At this time you failed to apply the required amount of rail anchors south of Baker Avenue. On December 8, 1989, the bolted rail joint at Baker Avenue pulled apart, which could have resulted in a train derailment had it not been discovered.

On December 8, 1989, you were instructed by Track Supervisor L. R. Guion to repair the pull-apart and apply the required rail anchors. On Sunday December 10, 1989, I discovered that you had not applied the rail anchors as instructed. On Monday, December 11, 1989, at approximately 7:30 a.m., you were instructed by Track Supervisor L.R. Guion to apply the required rail anchors in my presence. You did not apply any rail anchors south of Baker Avenue on Monday as instructed. On Tuesday, December 12, 1989, at 7:30 a.m., you were removed from service pending a hearing."

Following the Hearing, held on December 15, 1989, Claimant was assessed ten days' actual suspension and permanently disqualified as Track Foreman.

The Organization subsequently appealed the discipline and processed the Claim up to and including the highest Carrier officer designated to handle such matters. Accordingly, it is properly before the Board for resolution.

Evidence on the record before us concerning the events leading up to Claimant's discipline are directly contradictory. The Chief Engineer and the Track Supervisor both maintain that the Claimant was given direct orders to finish installing the anchors in question at 7:30 A.M. on Monday, December 11, 1989. Claimant, on the other hand insists that he was given no such order, and simply proceeding with his other work tasks on that day as he was instructed. Carrier's Hearing officer elected to believe the Chief Engineer and Track Supervisor.

Absent the ability to observe witness demeanor first-hand and in view of the long tradition of arbitral restraint in this area (Third Division Awards 27786, 24589; Second Division Award 8280), this Board is reluctant to substitute its judgment for that of Carrier's Hearing Officer. There is sufficient evidence on the record before us which, if believed, supports Carrier's finding of Claimant's culpability in this case. Accordingly, we are constrained to find that Carrier's assessment of discipline was neither excessive nor unreasonable.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dover - Executive Secretary

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