

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29587
Docket No. MW-30186
93-3-91-3-632

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance
(of Way Employes
(CSX Transportation, Inc. (former
(Louisville and Nashville Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The disqualification of Mr. D. S. Forbes as an assistant track foreman on August 13, 1990 was unwarranted and in violation of the Agreement [System File 14(20)(90)/12(90-1045) LNR].

(2) The Claimant shall have his seniority as an assistant foreman restored unimpaired, he shall have his record cleared of the charge leveled against him and he shall be paid the difference between what he earned working in a lower classification and what he would have earned as an assistant foreman from the time he was disqualified and continuing until he is restored as an assistant 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 employe 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.

By letter dated August 14, 1990, Carrier informed Claimant he had been disqualified from his Assistant Track Foreman position due to poor work performance. On August 17, 1990, Claimant requested a Hearing regarding his disqualification pursuant to Rule 27 - Discipline and Investigation, which reads as follows:

"27(a) Employees disciplined, demerited, or dismissed will be informed of the cause for such action in writing if requested.

27(b) An employee disciplined, shall, upon making a written request to the Division Engineer, within 10 days from the date of information, be given a fair and impartial hearing within 10 days thereafter. Decision will be rendered within 30 days from date investigation is completed. The employee shall have a reasonable opportunity to secure the presence of necessary witnesses and may be represented by the elected committee of the employees or fellow employees of his own choosing."

Carrier scheduled this Hearing for August 24, 1990, but then postponed it to September 11 and again to September 19, 1990. The Hearing was begun on that date, but recessed by the Hearing Officer because two Carrier witnesses were unavailable. The Hearing resumed on October 11, 1990, and Claimant was subsequently informed the decision to disqualify him was upheld.

The Organization has presented several procedural objections to this Board. Specifically, the Organization asserts the Carrier decided to disqualify Claimant prior to granting him a Hearing, the Carrier improperly postponed the Hearing unilaterally, the Carrier's decision was rendered by someone other than the Hearing Officer, and the Carrier never furnished a copy of the Hearing transcript to the General Chairman.

Our review of the record of the handling of this dispute on the property discloses that only two objections were made by the Organization prior to presenting this claim to the Board. The Organization raised the issues of the postponement of the Hearing and the failure to provide a transcript. As this Board is empowered only to consider disputes which have been properly handled on the property, those issues which were not presented to the Carrier will not be addressed herein.

With regard to the issue of postponements, we again note that no objection was made to the two initial postponements when the Hearing was convened. The only objection of record was to the Hearing Officer's decision to recess the Hearing after it commenced. This Board has long followed the principle that objections to the timeliness of a Hearing must be made prior to or at the Hearing, or else the objections are waived. We do not find merit in the Organization's objection regarding recessing the Hearing. A Hearing is held on a timely basis when it is convened within the Agreement time limit, regardless of when it is concluded. Further, it is evident the General Chairman was contacted about postponing the Hearing, but refused. No reason is given for this refusal. In cases where this Board has found a requirement that postponements must be by agreement between the parties, we have held that such agreement cannot be unreasonably withheld.

The requirement to furnish a transcript was addressed by us in Third Division Award 29485 involving these parties. As the facts herein are similar to those in that dispute, we will reaffirm that decision.

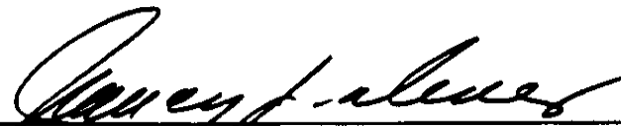
Turning to the merits, the record indicates there is substantial evidence to conclude Claimant was responsible for having a switch installed out of gauge. Under the circumstances, Claimant's disqualification was neither arbitrary nor unreasonable.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.