

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 29645  
Docket No. MW-28128  
93-3-87-3-679

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(Duluth, Winnipeg & Pacific Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The disqualification of Mr. R. Willeck as section foreman and his demotion to sectionman effective August 4, 1986 was arbitrary, capricious, improper and without just, sufficient or reasonable cause [System File G.106-R(86) (S)].

(2) The Carrier shall return Claimant R. Willeck to the position of section foreman at Twig, Minnesota with seniority and all other rights as such unimpaired and he shall be compensated for all wage loss 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 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.

At the relevant time, Claimant had 15 years of service with the Carrier and held the position of Section Foreman for approximately eight years. This dispute concerns Claimant's disqualification from the Section Foreman position effective August 4, 1986.

At the hearing held August 6, 1986, Roadmaster R. Soger testified:

"... [E]ver since Mr. Willeck has worked under me he's been average or below average section fore-

man, but for the last two years for some reason he's fell from average to poor. It seems like when our sections got longer and went to trucks and his crew changed if anything his work performance keeps deteriorating. But with the truck I felt we were going to get more production and he could plan his work better but it just don't seem to work this way with Mr. Willeck....It's been discussed with Mr. Willeck off and on and told what I expected...."

Roadmaster Soger documented specific instances forming the basis for disqualifying Claimant:

"It seems that Mr. Willeck does not understand or cares what is expected of him as a Section Foreman. He is always behind on his work and what work is done by him and his crew is very questionable.

When I gave him an order to fix a dip in the track on July 14, 1986, over a culvert at Mileage 33.3 he jacked up the east rail and tamped it up, then left with the spot 2-1/2" out of cross level. On my patrol I stopped and checked the spot with my level board and this is when I found out what Mr. Willeck had done at this spot. I called him on the radio and told him to come to mileage 33.3 and fix the spot by raising the west rail to make the spot level and also to make sure the spot got fixed. I sent the Shaw section crew to help.

On July 22, 1986, the Shaw, Twig and Pokegama Section crews were instructed by me to come and work with the B & B crew at mileage 52.7 to help with lining of the bridge. Mr. Willeck and his crew showed up 1 hour after everyone else had arrived some 20 miles further than Twig. When I asked him why he was so late he said that he had to stop and raise some joints. I'm sure he was just delaying getting to the bridge.

On July 28, 1986, I told Mr. Willeck that when talking to the train crews that the engines jumped just off the south end of crossing at mileage 19.3 and for him to jack up this spot and tamp it up. Mr. Willeck went about 15 Ft. south of the crossing and again jacked up the east rail

and tamped it. The next train going over the spot reported a wobble in the track, at which time I talked to Mr. Willeck on the radio and he said he would go and check it out. I told him to be sure and check the cross level. At 1515 before going off duty, Mr. Willeck called me and said that the track had gone out of line and that he lined it back and that the spot was 1" out of cross level. Mr. Willeck did not fix the spot that I had given him in the first place but again made a swing in the track.

It is plain to see that Mr. Willeck is not doing his job as a Section Foreman on the D.W.P. Rly., also we are losing the production of the three sectionmen under him. I feel that his attitude and poor work performance as section foreman fully justify his demotion from Section Foreman to sectionman."

While Claimant disputes a number of the contentions made by the Carrier, the record sufficiently establishes grounds of a continuing nature justifying the Claimant's removal from Section Foreman position.

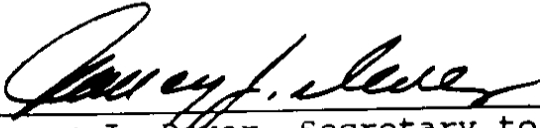
We have considered the Organization's procedural argument and given the independent evidence from Roadmaster Soger justifying the Carrier's actions coupled with Claimant's admission that he was given a fair and impartial hearing, we cannot say that Claimant was denied a fair hearing.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever, Secretary to the Board

Dated at Chicago, Illinois, this 7th day of June, 1993.