

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30122
Docket No. MW-30386
94-3-92-3-129

The Third Division consisted of the regular members and in addition Referee Robert T. Simmelkjaer when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation, Inc. (former Atlantic
(and West Point Railroad)

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

- 1) The ten (10) day suspension imposed upon Section Foreman D.H. West for alleged violation of CSX Transportation Operating Rule 501 and CSX Engineering Department Maintenance Rules and Practices Manual Rule 2102 was arbitrary, an abuse of the Carrier's discretion and on the basis of unproven charges [System File 91-70 (AWP/12 (91-310) AWP].
2. The Claimant shall have his record cleared of the charges leveled against him and he shall be made whole for any wage and fringe benefit loss suffered as a result of the Carrier's actions."

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 December 13, 1990, Claimant was charged with an alleged violation of CSX Transportation Operating Rule No. 501 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. Employees must not make any false statements or conceal facts concerning matters under investigation."

Claimant was also charged with an alleged violation of CSX Engineering Department Maintenance Rules and Practices Manual Rule 2102 which states:

"Track Foremen and Assistant Foremen will be responsible for the safety and quality of work performed under their supervision and shall do no work that will interfere with the safe passage of trains, except under proper protection."

The charges stem from incidents that occurred between December 4 and 8, 1990, when Claimant was assigned to replace about 175 ties on the Selma Branch and gauge track on the Woods Lead switch in Chester Yard. The record indicates that on December 4, 1990, the Assistant Roadmaster instructed Claimant to unload, transport (4 miles), distribute and install/replace 175 cross ties on the Selma Branch within three days. At the same time, Claimant was instructed to gauge track on the Woods Lead switch in the Chester Yard.

Following a review of the record in its entirety, the Board finds that while the Carrier provided substantial evidence to sustain the basic charges that Claimant's work product was "...incompetent, substandard and of poor quality," mitigating factors abound.

In the Board's opinion, Claimant was held accountable for conditions that were not clearly under his control such as: "working at night without adequate lighting, a backhoe operator removing and installing switch ties alone, an injured employee (on light duty) being utilized to manually nip cross ties, a problem with spikes not fitting into the plates..." The evidence also established that the gang which Claimant supervised was two men short on each of the dates involved. In addition, the testimony of the Backhoe Operator indicated that as he moved the backhoe over the track, he could have knocked ties down and removed the spikes at the switch on Woods Lead.

Despite the fact that the Carrier never disputed the circumstances cited, supra, Claimant was charged with a violation of both Carrier Rules for work performed on both the Selma Branch and on the Woods Lead switch in Chester Yard, which was allegedly

substandard and of poor quality. It is noteworthy that no evidence was adduced that the work performed at either site interfered with the safe passage of trains.

Given the foregoing circumstances, the Board concludes the discipline of a ten day actual suspension was excessive. Accordingly, Claimant's ten day actual suspension shall be reduced to a five day actual suspension.

Finally, the Organization raised the issue of whether Claimant received a fair and impartial Investigation. Since this issue was not raised on the property, the Board, in its appellate capacity, cannot address the matter on this level.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 4th day of April 1994.