

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33435
Docket No. MW-34148
99-3-97-3-699**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

(PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

(1) The discipline [ten (10) day suspension] imposed upon Foreman M. Bridges for his alleged failure to follow directions and failure to perform his duties properly was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement [System File SPG-D-1765/12 (96-1313) CSX].

(2) The Claimant’s record shall be cleared of the charges leveled against him 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 employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

As of the date of the incident in question, the Carrier had employed Claimant for a period of approximately 25 years. At the time of the incident, Claimant was a Surfacing Foreman.

In June 1996, the Carrier's Production Team Manager, P. E. Haddix held discussions with Claimant about the productivity and quality of the work that was being performed by Claimant's surfacing gang. On or about June 12, 1996, Haddix inspected the work quality of Claimant's surfacing gang and found instances of poor workmanship. Haddix told Assistant Foreman Popovich the details of the work needing correction.

On June 18, 1996, Carrier officers inspected SPG 5XT4's surfacing work and found it to be deficient. Claimant was informed by his Team Leader Williams to have the quality of this work improved, and that the tamper should be placed just behind the timbering portion of his gang by 3:30 P.M. each day in order to protect against track misalignments due to the heat. Pursuant to these discussions, on the evening of June 18, Claimant alleged that he discussed these changes with his gang, including Assistant Foreman Duboise to insure that the work was properly performed on the following two days, June 19 and 20, while Claimant was on vacation to attend his daughter's wedding.

On June 19, 1996, Haddix returned to the worksite in the evening and inspected the trackage and found that one area had not been successfully corrected and the ballast was low for several miles. At this time, Haddix questioned Duboise about the instructions which were to have been given by Claimant. At that time, Duboise claimed that he had not received complete instructions from Claimant. Based on these actions, a 10-day suspension was imposed upon Claimant.

By letter dated June 28, 1996, Claimant was instructed to attend an Investigation on July 8, 1996 charged with failure to follow instructions and failure to perform his duties properly as the Foreman of the 5XT4 team. The Investigation was postponed once and took place on July 12, 1996. As a result of the Investigation, on September 11, 1996 Claimant was suspended for 10 days from August 19, until August 30, and returning to work on September 2, 1996.

According to the Organization, when Claimant left work on June 18, 1996 he properly fulfilled all requirements of his job. This included instructing his subordinates, including Assistant Foreman Duboise, what to do in his absence. Thus, according to the

Organization, Claimant fulfilled all his responsibilities when he left for vacation on June 18.

The Carrier contends that on June 18, 1996, Team Leader Williams specifically instructed Claimant to have the quality of his work improved and to insure that the tamper was placed just behind the timbering portion of his gang at 3:30 P.M. each day in order to protect against track misalignments due to the heat. The Carrier contends that Claimant did not take proper care to insure that such instructions were followed. According to the Carrier, this is confirmed by the fact that the work was not completed properly when Haddix returned on June 19.

Further, the Organization contends that Claimant did not receive a fair and impartial Hearing as a key witness, Foreman Popovich was not present. The Organization claims that the Carrier failed to call Popovich in violation of Claimant's due process rights. According to the Organization, the Carrier's failure to call Popovich prejudiced the Organization in this matter. The Carrier claims that the Claimant did receive a fair and impartial Hearing. He was given proper notice of the charges, a sufficient amount of time to prepare a defense and the opportunity to examine and cross-examine witnesses.

In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence de novo. As such, our function is not to substitute our judgment for the Carrier's, nor to decide the matter in accord to what we might or might not have done had it been ours to determine, but to pass upon the question whether there is substantial evidence to sustain a finding of guilty. If the question is decided in the affirmative, we are not warranted in disturbing the penalty unless we can say it appears from the record that the Carrier's actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of the Carrier's discretion. (See Second Division Award 7325, Third Division Award 16166).

On the question of whether Claimant was negligent and/or failed to properly perform his duties and failed to follow instructions on June 18, 1996 as a Foreman, the Board finds that there is substantial evidence to support the Carrier's position that Claimant failed to properly perform his duties as a Foreman and failed to follow instructions. We find that Claimant was in fact instructed by Williams on June 18, 1996 to improve the quality of the work and to make sure that the tamper was in the correct position at 3:30 P.M. on each day. Claimant indicated that he understood Williams

instructions. According to Haddix, when he returned to the job site on the evening of June 19, the work had not been completed properly. When Haddix then asked Assistant Foreman Duboise about whether Claimant had transmitted Williams' instructions to him, Duboise indicated that he had not. This was confirmed by Williams' testimony.

It is the Carrier's position that Claimant was responsible for carrying out Williams' instructions and he did not properly inform his subordinates of those instructions. Williams testified that he told Claimant about the problems and when he returned to check on the status of the track, Duboise told him that the instructions had not been transmitted by Claimant to the crew. The Board finds that Claimant was responsible for the completion of Williams' instructions. The Organization claimed that Duboise was in fact told by Claimant of Williams' instructions and testified as such. However, this does not change our decision. The Board's role is not to re-determine credibility. That is the role of the Hearing Officer at the Investigation (See Public Law Board No. 2917, Award 5). Thus, we find that there was substantial evidence to support the Carrier's position that Claimant was negligent and/or failed to properly perform his duties and failed to follow instructions on June 18, 1996.

As stated above, the Organization claims that Claimant was denied a fair and impartial Hearing because Foreman Popovich was not called by the Carrier as a witness at the Hearing. After reviewing the facts of this case, we disagree and find that Claimant was granted a fair and impartial Hearing. The Organization had the opportunity to call any witnesses that it believed it needed for the Investigation. It chose not to call Popovich. Further, even if Popovich had been present, that information is not relevant. The conversation between Popovich and Haddix occurred on June 12, a full week before the conversation between Claimant and Williams. The issue here is whether Claimant properly transmitted the relevant information to his crew. The issue of transmitting any information to Popovich on June 12 is not relevant. The Board finds that the Claimant did receive a fair and impartial Hearing.

Thus, based upon the entire record, the Board finds that there was substantial evidence to sustain Carrier's position. The Carrier is correct that Claimant was responsible for a certain section of track on June 19 and 20. As a Foreman, it was his responsibility to have the track work corrected. However, he did not do so. Further, we find that Claimant received a fair and impartial Hearing.

As to the degree of penalty, as stated above, the Board will not overturn a penalty unless we can say it clearly appears from the record that the Carrier's actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of that discretion. In reviewing this record, we cannot say that the Carrier abused its discretion in this case.

Thus, the Board upholds the 10-day suspension imposed upon the Claimant.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of August 1999.